
(2013) 04 AP CK 0105
In the Andhra Pradesh High Court
Case No : C.M.A. No. 2069 of 2004

Smt. Dosali Appalanarasamma and 5 Others	APPELLANT
Vs	
Smt. A.V. Swarnalatha and Another	RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2013) 2 AnWR 221

Hon'ble Judges : B.N. Rao Nalla, J

Bench : Single Bench

Advocate : G. Ram Gopal, for the Appellant; B. Devanand, Counsel, for the Respondent

Judgement

B.N. Rao Nalla, J.—The petitioners in M.O.P. No. 204 of 2000 on the file of the Motor Vehicles Accidents Claims Tribunal- cum- District Judge, Visakhapatnam assailing the impugned order dated 13th August, 2003 filed this appeal seeking enhancement of compensation since they were awarded only Rs. 1,20,360/- with proportionate costs and interest at 9% per annum from the date of the petition till realisation, though they claimed a total compensation of Rs. 2,00,000/- for the death of deceased - Dosali Suri, who is husband of petitioner No. 1 and father of petitioner Nos. 2 to 6. For the sake of convenience, the parties hereinafter referred to as they arrayed in the M.O.P.

2. The brief facts of the case that led to filing the present appeal are that the deceased was rickshaw puller and on 11.10.1997 at about 2.00 p.m., when he was proceeding with his rickshaw from Maddilapalem to Isukathota, a car bearing No. AP 31 5157 came from the opposite direction and dashed against the rickshaw, as a result, the deceased received grievous injuries and he was shifted to King George Hospital, Visakhapatnam, where he succumbed to the injuries. III Town Police registered a case in Crime No. 132 of 1997. The deceased was aged 48 years at the time of the accident and was earning Rs. 100/- to Rs. 150/- per day. Respondent No. 1 being the owner of the car and respondent No. 2 being

the insurer of it are jointly liable to pay compensation.

3. Respondent No. 1 - owner of the car was set ex parte. Respondent No. 2 - insurance company filed counter contending that the petitioners are put to strict proof of the averments made in the petition including the manner in which the accident occurred and also put to strict proof with regard to possession of valid driving licence by the driver of the car at the time of the accident. It is stated that the compensation claimed by the petitioners is excessive.

4. Basing on the pleadings of both sides, the relevant issues were framed by the Tribunal as to the rash and negligent driving of the car bearing No. AP 31 5157 by its driver and as to the entitlement of the petitioners to claim compensation and the liability of the respondents to pay the same.

5. During the course of trial, on behalf of the petitioners, petitioner No. 1 - wife of the deceased was examined as PW. 1 besides examining eye witness to the accident as PW. 2 and Exs. A.1 to A.5 were marked. On behalf of the respondents, no evidence was adduced.

6. The Tribunal after taking into consideration the evidence and other material brought on record, held that the accident occurred due to rash and negligent driving of the car by its driver and that the petitioners are entitled to a total compensation of Rs. 1,20,360/-. Not being satisfied with the compensation awarded, the present appeal has been preferred by the petitioners seeking enhancement thereof.

7. Heard the learned counsel for the petitioners - appellants and the learned standing counsel for respondent No. 2 - insurance company.

8. The learned counsel for the petitioners - appellants contended that the Tribunal committed error in fixing the income of the deceased at Rs. 1,000/- per month and that as per the decision of the Apex Court in *Sarla Verma v. Delhi Transport Corporation*¹, the appropriate multiplier is "13" for a person aged 48 years. The learned counsel contended that the Tribunal ought to have awarded Rs. 15,000/- towards loss of estate and Rs. 8,000/- towards funeral expenses.

9. The learned standing counsel for respondent No. 2 - insurance company submitted that the Tribunal has awarded just compensation by giving cogent and convincing reasons, and as such, the impugned order does not warrant interference at the hands of this Court.

10. It is the evidence of PW. 1- wife of the deceased that her husband used to earn Rs. 3,000/- per month by plying rickshaw and that she and petitioner Nos. 2 to 6 are dependents on him. It is the evidence of PW. 2 that the deceased was the rickshaw puller and was earning Rs. 100/- to Rs. 150/- per day. PW. 2 is also the rickshaw puller and that he is the eye witness to the accident. As observed by the Tribunal there was no material on record to prove that the deceased was earning Rs. 3,000/- per month except oral testimony of PWs 1 and 2. As per Second Schedule u/s 163-A of the Motor Vehicles Act, 1988, non-earning

person's income has to be fixed at Rs. 15,000/- per annum. In this case, the evidence of PWs 1 and 2 is that the deceased was a rickshaw puller and was earning Rs. 3,000/- per month. In the circumstances and the deceased was non-earning member person, in fact, he was living by plying rickshaw and also to meet the ends of justice, this Court is of the view that the Tribunal ought to have fixed the income of the deceased at Rs. 2,000/- per month, which is just and reasonable, and as such this Court has fixed the income of the deceased at Rs. 2,000/- per month and Rs. 24,000/- per annum. Since there are six dependents, 1/4th of the income has to be deducted towards personal expenses of the deceased and thus, the loss of dependency is Rs. 18,000/- per annum. Further, Ex. A.2 -post-mortem certificate indicates that the deceased was 48 years at the time of his death in the accident. As per the decision of the Apex Court in *Sarla Verma v. Delhi Transport Corporation* (supra), the appropriate multiplier for a person aged 48 years is "13" and thus the total loss of dependency would come to Rs. 2,34,000/- (Rs. 18,000/- x 13), apart from that the petitioner No. 1 is entitled to Rs. 16,000/- towards loss of consortium. Therefore, the petitioners are held to be entitled to a total compensation of Rs. 2,50,000/-. Since the petitioners were awarded Rs. 50,000/- under "no fault liability" in M.O.P. No. 1187 of 1997, the said amount has to be deducted from the total compensation and the same is hereby deducted and thus the petitioners are held to be entitled to Rs. 2,00,000/- (Rupees two lakhs) only (Rs. 2,50,000/- minus Rs. 50,000/-). In the result, the C.M.A. is allowed enhancing the compensation from Rs. 70,360/- to Rs. 2,00,000/-, with interest at 6% per annum so far as the enhanced compensation is concerned. There shall be no order as to costs.