(2013) 10 AP CK 0069

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 59 of 2005

Smt. Monangi Lakshmi, Monangi Divakar and Monangi Sunil — APPELLANT

Vs

Sri Andhravarapu Gowrishankara Rao, Monangi Kamal and National Insurance Company Ltd. — RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2013) 10 AP CK 0069

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : G. Venkateswara Rao, for the Appellant; G. Chandra Sekhara Rao for Respondent No. 2 and Sri B. Soma Sekharam, for the Respondent

Judgement

B. Siva Sankara Rao, J.—The Claimants, wife and two minor children of the deceased by name Sri Monangi Subbarao, filed this appeal, having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Vizianagaram (for short, ''Tribunal'') in M.V.O.P. No. 734 of 2001 dated 07.04.2013, awarding compensation of Rs. 4,54,400/- (Rupees four lakhs fifty four thousand and four hundred only) as against the claim of Rs. 12,00,000/- (Rupees twelve lakhs only), against respondent Nos. 1 to 3 viz., the rider, owner and insurer of the crime vehicle(Scooter)for enhancement of compensation as prayed for in the claim petition u/s 166 of the Motor Vehicle Act, 1988 (for short, ''the Act''). Heard Sri Venkateswara Rao Gudipati, the learned counsel for the appellants, Sri B. Somashekharan, the learned standing counsel the 3rd respondent-National Insurance Company Limited and Sri G. Chandrasekhara Rao, the learned counsel for the 2nd respondent. The 1st respondent who was served with notice is called absent with no representation and thus taken as heard the 1st respondent for the absence to decide on merits and perused the record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

2. The contentions in the grounds of appeal in nutshell are that the award of the Tribunal is contrary to law, weight of evidence and probabilities of the case, that the Tribunal erred in arriving a wrong conclusion on the quantum of compensation and awarded a very meager amount instead of awarding as claimed and prayed for from nature of avocation of the deceased and earnings there from and from the age and multiplier that is applicable and also for the loss of consortium, loss of estate, loss of love, affection, care and protection etc., and hence to allow the appeal by enhancing and awarding full compensation as prayed for.

3. How the points that arise for consideration in the appeal are:

1. Whether the compensation awarded by the Tribunal is not just and requires interference by this Court while sitting in appeal against the award and if so with what enhancement to arrive a just compensation and with what rate of interest?

2. To what result?

POINT-1:

4. The facts of the case as proved before the Tribunal and not in dispute in this appeal are that, on 27.11.2000 due to the rash and negligent driving of the rider of the crime vehicle (Scooter bearing No. AP 35 B 3517) i.e. the 1st respondent that belongs to the 2nd respondent insured with the 3rd respondent covered by Ex. B.3 policy, while the deceased was pillion rider in their proceeding on some work, they fell down, that deceased Subba Rao who sustained severe injuries in the occurrence was succumbed there from on 06.12.2000 while undergoing treatment in CDR hospital, Visakhapatnam (after shifted from Government hospital, Seethanagaram, where he was admitted initially. It is also not in dispute that the deceased Monangi Subba Rao, was doing business and aged about 38 years-(as per Ex. P.2 Postmortem report and Ex. A.6 I.T. Pan card showing date of birth 16.11.1962),, which occurrence is covered by Ex. A.1 First Information Report in Cr. No. 36 of 2000 u/s 304A IPC, and also proved from Ex. A.3 M.V. report and evidence of P.W.1 with reference to it and of the eye witness P.W.2. The avocation of the deceased besides proved from Ex. A.5 partnership deed, Ex. A.4 proceedings of the Excise Superintendent referred in Ex. A.2 and Ex. A.8 also and even in the cross-examination of the P.W.1 by the respondents it was confirmed of said avocation of the deceased as businessman but for disputing the claim of his earnings at Rs. 8000/- (Rupees eight thousand only) per month there from. The Tribunal from said evidence on record come to the conclusion of there is insurance coverage under Ex. B.1 : B.3 policy and the respondent No. 1 got Ex. B.2 driving licence and the 3rd respondent insurance company is liable to indemnify the 2nd respondent-owner of the vehicle to compensate the claimants and there from taken the earnings of deceased at Rs. 3,000/- p.m. and applied the multiplier 15 and also awarded Rs. 64,400/- i.e., towards medical expenses of Rs. 60,000/- proved from P.W.1''s evidence with reference to Ex. A.7 bills, Rs. 2000/-for funeral expenses and another Rs. 2,400/- for transport and arrived

total amount of Rs. 4,54,400/- against respondent Nos. 1 to 3 jointly, to be entitled by petitioner Nos. 1 to 3 equally.

5. It is the contention of the learned counsel for the claimants in support of the grounds of the appeal that though the Tribunal not taken the earnings of deceased claimed at Rs. 8000/- per month, has taken a very low amount of earnings of Rs. 3000/- per month which even for a domestic housewife can be taken or an agricultural cooli can get to consider as the minimum earning capacity of every major human being, though the multiplier adopted of 15 is not in dispute and hence to award the compensation prayed for which is a just compensation by applying the multiplier 15 and by taking consideration of the earnings at a minimum of Rs. 5,000/- per month with 50% increase there from of future earnings.

6. Before coming to decide, what is just compensation in the factual matrix of the case, It is apt to state that perfect compensation is hardly possible and money cannot renew a physique or frame that has been battered and shattered, nor relieve from a pain suffered as stated by Lord Morris. In Ward v. James 1965 (1) All. E.R. 563, it was observed by Lord Denning that award of damages in personal injury cases is basically a conventional figure derived from experience and from awards in comparable cases. Thus, in a case involving loss of limb or its permanent inability or impairment, it is difficult to say with precise certainty as to what composition would be adequate to sufferer. The reason is that the loss of a human limb or its permanent impairment cannot be measured or converted in terms of money. The object is to mitigate hardship that has been caused to the victim or his or her legal representatives due to sudden demise. Compensation awarded should not be inadequate and neither be unreasonable, excessive nor deficient. There can be no exact uniform rule in measuring the value of human life or limb or sufferance and the measure of damage cannot be arrived at, by precise mathematical calculation, but amount recoverable depends on facts and circumstances of each case. Upjohn LJ in Charle red House Credit v. Tolly 1963 (2) All.E.R. 432 remarked that the assessment of damages has never been an exact science and it is essentially practical. Lord Morris in LORD v. in 555 All.E.R (1) 1969 Cleaver, Parry Morris>observed that to compensate in money for pain and for physical consequences is invariably difficult without some guess work but no other process can be devised than that of making a monitory assessment though it is impossible to equate the money with the human sufferings or personal deprivations. The Apex Court in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, at paragraph No. 12 held that in its very nature whatever a Tribunal or a Court is to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standard. Thus, in most of the cases involving Motor Accidents, by looking at the totality of the circumstances, an inference may have to be drawn and a guess work has to be made even regarding compensation in case of death, for loss of dependent and

estate to all claimants; care, guidance, love and affection especially of the minor children, consortium to the spouse, expenditure incurred in transport and funerals etc., and in case of injured from the nature of injuries, pain and sufferance, loss of earnings particularly for any disability and also probable expenditure that has to be incurred from nature of injuries sustained and nature of treatment required. The appeal claim herein is thus confined to the quantum from the contention of not correctly taken the multiplicand and multiplier with future prospects in earnings and on the quantum of consortium and funeral expenses etc., in arriving a sum for awarding just compensation.

7. In this regard, it is well laid down by the Apex Court (Three Judges Bench) in the latest expression in Rajesh and Others Vs. Rajbir Singh and Others, at paragraph Nos. 1 and 7 referring to the earlier expressions in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Nagappa Vs. Gurudayal Singh and Others, that compensation which appears to it to be just, has to be assessed and awarded by the Tribunal set up u/s 166 of the Act. The expression ''just compensation'' has been explained in Sarla Verma''s case (cited supra) holding that the compensation awarded by the Tribunal does not become just compensation merely because the Tribunal considered it to be just. ''Just compensation'' is an adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation.

8. From the above legal principles and in the factual matrix of case, it is since proved that the deceased - Monangi Subbarao, aged about 38 years, was doing business and for no proof of his earnings, the income of the deceased can reasonably be arrived at Rs. 3,600/- p.m., with 50% increase thereon of future prospects and by adopting multiplier 15 as laid down by the Apex Court in Rajesh''s case (3rd cited supra) at paragraph No. 11 referring to the earlier expression in Sarla Verma''s case (4th cited supra) it comes to Rs. 5400/- and after 1/3rd deducted for personnel expenses of the deceased, it is Rs. 3,600/- p.m. x 12 : Rs. 43,200/- per annum x 15 multiplier : Rs. 6,48,000/- and for funeral expenses Rs. 25,000/-, loss of consortium to 1st claimant of Rs. 1,00,000/- and Rs. 27,000/- towards loss of care, support and guidance-particularly to the claimant Nos. 2 and 3, as per the guidelines laid down by the Apex Court in Rajesh''s case (3rd cited supra), in all comes the compensation comes to Rs. 8,00,000/-.

9. Having regard to the above, the just compensation which the claimants are entitled comes to Rs. 8,00,000/- to so award. The interest at 9% per annum awarded by the Tribunal even not in dispute, from the settled proposition of law Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, Sarla Verma''s case (cited supra) and from the latest expression of the Apex Court in Rajesh''s case (cited supra), interest is awarded at TAX per annum by modifying and reducing from 9% per annum awarded by the Tribunal. Accordingly, Point-1

for consideration is answered.

POINT-2:

Accordingly and in the result, the appeal is partly allowed by modifying the Award of the Tribunal on quantum of compensation by enhancing the same from Rs. 4,54,000/- to Rs. 8,00,000/- (Rupees eight lakhs only) with interest at 7 1/2% per annum from date of the claim petition till realization/deposit with notice. Out of said amount, the 1st Claimant is entitled to 40% and Claimant Nos. 2 and 3 each 30%. Respondent Nos. 1 to 3 who are jointly and severally liable to pay the compensation are directed to deposit within one month said amount with interest from the date of petition (after deduction of any amount paid so far pursuant to the award of the Tribunal), failing which the claimants can execute and recover. On such deposit or execution and recovery, Claimant No 1 is permitted to withdraw Rs. 1,00,000/- (Rupees one lakh only) and rest of the amounts of the Claimants be invested respectively in separate Fixed Deposits in a nationalized bank. There is no order as to costs in the appeal.