(2014) 11 AP CK 0132

In the Andhra Pradesh High Court

Case No : C.M.A. No. 2790 of 2004

Syed Meeran and Others APPELLANT

Vs

Syed Ismail and Others RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166, 170(b), 173
Penal Code, 1860 (IPC) — Section 304-A

Citation : (2015) 1 AnWR 861

Hon'ble Judges : A. Shankar Narayana, J

Bench : Single Bench

Advocate : V. Ravi Kiran Rao, Advocates for the Appellant; S.V. Ramana, Advocates for the Respondent

Judgement

A. Shankar Narayana, J.—Dissatisfied with the award of Rs. 1,09,000/- as compensation against the claim of Rs. 2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, ''the Act''), the instant appeal is preferred, under Section 173 of the Act, seeking enhancement of compensation by modification of the order, dated 03.01.2004, in O.P. No. 559 of 1999 on the file of Chairman, Motor Vehicle Accidents Claims Tribunal-cum-I Additional District Judge, Medak at Sangareddy.

2. The appellants herein are the petitioners; while respondent Nos. 1 and 2, who are the owner and insurer of the vehicle, which involved in the accident, are respondent Nos. 1 and 2, respectively, in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 02.10.1999 at about 08:00 P.M., one Mohd. Iqbal and Syed Moulana were proceeding to Electrical Shop to purchase material on a bi-cycle and when they reached near Ediga Gadda, a lorry bearing registration No. ABT 1551 driven at high speed and in a rash and negligent

manner hit their cycle, due to which they received injuries. The said Syed Moulana received fatal injuries and succumbed to injuries while undergoing treatment in the hospital. The Station House Officer, Zaheerabad Police Station, has registered a case in Crime No. 221/1999, under Section 304-A I.P.C., against the Driver of the lorry, observed usual formalities and laid a charge sheet against him. The petitioners, being parents of the deceased Syed Moulana, contending that the deceased was 23 years old, Electrician by profession doing electrical works since about five years and used to earn Rs. 6,000/- per month, contributing the entire amount for the sustenance of the family, sought a sum of Rs. 2,00,000/- as compensation against respondent Nos. 1 and 2, who are the owner and insurer of the crime vehicle, respectively.

5. Before the Tribunal, respondent No. 1, who is owner of the vehicle, which involved in the accident, was set ex parte.

6. Respondent No. 2 - Insurance Company resisted the claim requiring the petitioners to prove the material allegations made in the petition. It is also contended that the deceased himself contributed for the accident. Thus, seeking protection under Section 170(b) of the Act, sought to dismiss the petition contending that the claim is excessive.

7. In the direction of accounting for responsibility of the accident, the Tribunal framed three issues. During enquiry, petitioner No. 1 examined himself as P.W. 1 apart from examining one Mohd. Iqbal, an eye-witness to the accident, as P.W. 2 and marked Exs. A1 to A6, as to their entitlement for the compensation claimed. On behalf of the contesting respondent, no witnesses were examined, but a copy of policy was marked as Ex. B1 on consent.

8. The Tribunal, on issue No. 1, basing on the evidence of P.W. 2-eye-witness to the occurrence, supported by Exs. A1, A2 and A5, which are the certified copies of F.I.R., Charge Sheet and M.V.I.''s Report, respectively, found it in favour of the petitioners. On issue No. 2, the Tribunal having observed that the petitioners failed to produce any satisfactory evidence with regard to the earnings of the deceased as Rs. 6,000/- per month as electrician, except the solitary statement of P.W. 1 not supported by any income proof, took the income of the deceased at Rs. 1,500/- per month equating with that of a labourer, deducted 1/3rd therefrom towards his personal expenses and considering the remainder as contribution towards family, worked out the annual income at Rs. 12,000/- and taking the age of the mother of the deceased as 40, applied multiplier ''12'' and worked out the compensation at Rs. 1,44,000/-. Besides the same, the Tribunal also granted Rs. 15,000/- towards non-pecuniary damages and thus, granted a total sum of Rs. 1,59,000/- as compensation. Since the petitioners were already granted Rs. 50,000/- under no fault liability, the same was deducted and interest at 9% per annum was granted on the balance amount with a further direction as to apportionment and withdrawal of the amounts.

9. It is the aforesaid order which is challenged in the instant appeal contending

that the Tribunal was not right in fixing the income of the deceased at Rs. 1,500/- per month equating him with that of a labourer and the income of the deceased was at least Rs. 3,000/- per month. It is further contended that the Tribunal ought to have fixed the monthly earnings of the deceased at Rs. 3,000/- and ought to have worked out the compensation by giving suitable deduction of 1/3rd therefrom towards personal expenses and, therefore, sought to modify the order of the Tribunal and to grant the balance amount.

10. Heard Sri V. Ravi Kiran Rao, learned counsel for the appellants and Sri S.V. Ramana, learned counsel for respondent No. 1 and Ms. Y. Kamala Rani, learned counsel for respondent No. 2.

11. The short question that arises for consideration is whether the petitioners are entitled to enhancement of compensation awarded by the Tribunal.

12. Perused the order under challenge and the evidence let in by the petitioners, both, oral and documentary. As rightly observed by the Tribunal, except the solitary evidence of P.W. 1, as to the income of the deceased, no other evidence is forthcoming. The documentary evidence under Exs. A1, A2 and A5 relate to police records such as F.I.R., Charge Sheet and M.V.I.''s Report. The petitioners have not chosen to examine any others, who utilized the services of the deceased. In such an event, arriving at Rs. 1,500/- per month as the earnings of the deceased by the Tribunal cannot be faulted with. The Tribunal has deducted 1/3rd from the monthly earnings of the deceased towards personal expenses and applied multiplier ''12'' taking the age of the younger parent of the deceased i.e., petitioner No. 2 as 40 years, as per the decision of this Court in Bhagwandas Vs. Mohd. Arif, . However, the same requires modification in view of the decisions of The Honourable Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Amrit Bhanu Shali and others v. National Insurance Company Limited and others 2012 AIR (SCW) 3901. Thus, as per the principles laid down by the Honourable Apex Court in Sarla Verma''s case (supra), when half of the amount is deducted from his monthly income towards his personal expenses, the remainder works out to Rs. 750/- per month towards contribution for the family and the annual income works out to Rs. 9,000/- per annum. Concerning multiplier to be applied, it is apt to refer to the decision of The Honourable Supreme Court in Amrit Bhanu Shali''s case (supra). The Honourable Supreme Court, while observing that the selection of multiplier is based on the age of the deceased and not on the basis of the age of dependants, held in paragraphs ''16'' to ''18'' thus:

"16. Admittedly both the parents, 1st appellant - Amrit Bhanu Shali (father) and 2nd appellant - Smt. Sarlaben (mother) have been held to be dependents of deceased - Ritesh Bhanu Shali and, therefore, the Tribunal held that the 1st appellant and 2nd appellant have the right to get the compensation. On the date of the accident the 3rd appellant - Mamta was not married but by the time the case was heard by the Tribunal the 3rd appellant - Mamta had already been married. In these circumstances, she is not found to be dependent upon the deceased. Thus, both the parents being dependents, i.e., father and the mother, the Tribunal rightly restricted the ''personal and living expenses'' of the deceased to 50% and contribution to the family was required to be taken as 50% as per the decision of this Court in the case of Sarla Verma (supra).

17. The selection of multiplier is based on the age of the deceased and not on the basis of the age of dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of dependents has no nexus with the computation of compensation.

18. In the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, this Court held that the multiplier to be used should be as mentioned in Column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 26 years, the multiplier of 17 ought to have been applied. The Tribunal taking into consideration the age of the deceased rightly applied the multiplier of 17 but the High Court committed a serious error by not giving the benefit of multiplier of 17 and bringing it down to the multiplier of 13."

13. Applying the above principle, since the deceased was 23 years old on the date of accident, the relevant multiplier as per Sarla Verma''s case (supra) will be ''18'', and when the same is applied loss of dependency works out to Rs. 1,62,000/-. The Tribunal has awarded Rs. 15,000/- towards non-pecuniary damages. Of course, the Tribunal has not awarded the said amount under distinct heads. Keeping in view, the age of the deceased and as his death had occurred at his prime youth, as against Rs. 15,000/- awarded by the Tribunal towards pecuniary damages, Rs. 25,000/- is granted. Thus, the petitioners are entitled to Rs. 1,87,000/- as compensation with interest at 9% per annum on Rs. 1,59,000/- awarded by the Tribunal and at Rs. 7.5% per annum on the enhanced amount of Rs. 28,000/-, after adjusting Rs. 50,000/- granted by the Tribunal initially under no fault liability, under Section 140 of the Act.

14. Subject to the above modification, the appeal is allowed in part. As a sequel thereto, Miscellaneous Petitions, if any, pending in this appeal shall stand disposed of. There shall be no order as to costs.

