(2012) 06 AP CK 0071

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No''s. 3677 and 3714 of 2005

The New India Assurance Company Ltd. APPELLANT

Vs

Samala Agaiah and Another
 Samala Agaiah Vs The New India Assurance Company Ltd. and Another RESPONDENT

Date of Decision : 06-06-2012

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 2(11)
Motor Vehicles Act, 1988 — Section 110A, 140, 166, 166(1)(c)

Citation : (2012) 6 ALT 99

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Judgement

R. Kantha Rao

These two appeals arise out of the order, dated 21.02.2005, passed by the Chairman, Motor Accidents Claims Tribunal-cum-Third Additional District Judge, Karimnagar in O.P. No. 782 of 2003. M.A.C.M.A. No. 3677 of 2005 is filed by the New India Assurance Company Limited, which was the second respondent before the Tribunal below, whereas M.A.C.M.A. No. 3714 of 2005 is filed by the claimant.

2. I have heard Sri C.M. Prakash, learned counsel appearing for the claimant and Sri P. Harinatha Gupta, learned counsel appearing for the New India Assurance Company Limited.

3. The deceased Samala Vittal, who was said to be a Weaver, was aged 55 years on the date of his death in the accident. He was proceeding in an auto bearing No. AP 15 V 2574 at Thangallapalli bridge on 09.01.2003. The said auto turned turtle as a result of the rash and negligent driving of its driver. The deceased, who was one of the passengers, sustained severe injuries in the said accident. Initially, he was shifted to Government Hospital, Siricilla. From there, he was taken to Government Hospital, Karimnagar for better treatment but succumbed to injuries on 01.01.2003 while undergoing treatment in the said hospital.

4. The claimant, who is the younger brother of the deceased, filed a claim petition u/s 166 (1)(c) of the Motor Vehicles Act, 1988 (for short, ''the Act'') on account of the death of the deceased in the motor vehicle accident seeking compensation of Rs. 2,00,000/-. According to him, the deceased was a Weaver and was earning Rs. 5,000/- per month. It was contended before the Tribunal below by the New India Assurance Company Limited, which is the insurer of the offending vehicle, that since the claimant is not dependent on the deceased, he is not entitled to claim compensation under the provisions of the Act. The learned Tribunal repelled its contention on the ground that as a legal representative of the deceased, the claimant can seek compensation u/s 166 of the Act notwithstanding the fact that he is not a dependent on the deceased. The learned Tribunal considered the income of the deceased notionally at Rs. 2,000/- per month believing the version that the deceased was a Weaver by profession and by applying multiplier in Bhagwan Das vs. Mohd. Arif ''s case, awarded compensation of Rs. 82,000/-.

5. The Insurance Company contends in its appeal that the claimant, who is the younger brother of the deceased, is not entitled to claim compensation since he is not the dependent on the deceased whereas the claimant contends in his appeal that the compensation granted is grossly inadequate, not justifiable and not reasonable and requires enhancement. Since common questions of fact and law would arise for consideration in these two appeals, they are being disposed of by the following common judgment:

6. Two questions would arise for consideration in these two appeals.

1. Whether the claimant, who is the younger brother of the deceased, is entitled to claim compensation on account of the death of the deceased in the motor vehicle accident under the provisions of the Act? and

2. If so, the claimant, not being a dependent on the deceased, how to arrive at the quantum of compensation to be paid to him?

7. Point No. 1:- Section 166 of the Act does not use the word "dependent" on the question as to who may apply for compensation. The said provision lays down that where the death has resulted from the accident, the application for compensation arising out of the accident can be filed by all or any of the legal representatives of the deceased. Therefore, the claimant, who is the younger brother of the deceased and was living with the deceased on the date of his death, can make an application u/s 166 of the Act seeking compensation on account of the death of the deceased in the motor vehicle accident.

8. In Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and another, the Apex Court held that in an Indian family, brothers, sisters and brothers'' children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed in an accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act. Further held that the

Parliament intended that the expression ''legal representative'' in Section 110-A of the Act should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased.

9. In Smt Manjuri Bera vs. Oriental Insurance Co. Ltd., the question whether a married daughter of the deceased, who was not dependent on him, is entitled to compensation u/s 166 of the Act fell for consideration before the Supreme Court. The Supreme Court held as follows:

13. As observed by this Court i Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression ''legal representative''. As observed in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

16. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Shri Jayant Bhushan, the learned Amicus Curiae.

In view of the Judgment of the Supreme Court above recorded, the contention of the learned counsel appearing for the claimant that the compensation amount has to be computed taking recourse to the multiplier method cannot be accepted. Even though the claimant, not being a dependent, is entitled for compensation, he is not entitled to claim compensation towards loss of dependency. As a legal representative of the deceased, compensation can be awarded to him only towards loss to the estate. In the judgment of the Supreme Court above referred, though it was held that the quantum of compensation to be granted towards loss to the estate to the legal representative of the deceased, who is not a dependant, shall be not less than the liability flowing from Section 140 of the Act, ultimately to the married daughter, who was not dependant on the deceased, the Supreme Court allowed to receive compensation under ''no fault liability'' in terms of Section 140 of the Act. In the instant case, the evidence on record discloses that the wife of the deceased was separated from him and she died subsequently. Except the claimant, who is the younger brother of the deceased, there are no other legal representatives, who are entitled to succeed to the estate of the deceased. The claimant, therefore, is entitled to compensation but the said compensation would be towards loss to the estate and not towards loss of dependency. He, being the younger brother of the deceased not dependant on him, is entitled to receive the compensation under ''no fault liability'' in terms of Section 140 of the Act and nothing more.

Point No. 2:- In the instant case, therefore, the compensation granted by the Tribunal below, is reduced from Rs. 82,000/- to Rs. 50,000/- with interest at the rate of 7.5 % p.a. from the date of petition till the date of realization. Consequently, M.A.C.M.A. No. 3714 of 2005 filed by the claimant is dismissed and M.A.C.M.A. No. 3677 of 2005 filed by the Insurance Company is partly allowed. There shall be no order as to costs.