

(2012) 12 AP CK 0037

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 2632 of 2012

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Athmakuri Rama Rao and Another

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2013) 2 ALD 654

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : A. Ramakrishna Reddy, for the Appellant; Pulla Rao Yellanki, Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.G. Shankar

1. The insurer, who is the 2nd respondent in M.V.O.P. No. 776 of 2009 on the file of the Chairman, Motor Accident Claims Tribunal cum Principal District Judge, Khammam (the Tribunal, for short), preferred the present appeal assailing the award of compensation at Rs. 2,75,000/- together with interest at 7.5% per annum in favour of the sole claimant. The deceased Athmakuri Ramaiah was statedly doing commission business and was also indulging in agricultural work. On 27-5-2006, the deceased and his friend P.W. 2 were returning from Bhairavunipalli village to their village Yadavalli on a motorcycle bearing registration No. AP 20J 7171 driven by P.W. 2 with the deceased as pillion-rider, at about 10.30 a.m., the lorry bearing registration No. AP 7W 2797 driven by the 2nd respondent herein dashed the motorcycle. The deceased sustained fracture of the shaft of the right femur, fracture of the right ankle, fracture of the right fibula and injuries on the right knee, right ankle and face apart from minor injuries all over the body. The deceased was immediately shifted to Mamatha General Hospital, Khammam. The deceased underwent treatment for a period of 9 days at the hospital.

2. The deceased was later shifted to Yasoda Super Speciality Hospital, Hyderabad. The deceased underwent a major surgery at Hyderabad. The deceased died on 27-10-2006. The sole claimant contended that the death of the deceased was on account of the injuries sustained by the deceased in the accident. The claimant, who is the son of the deceased, consequently claimed compensation at Rs. 4,00,000/- for the death of the deceased.

3. The claimant examined four witnesses on his side. He has also exhibited Exs. A-1 to A-13. The owner cum driver of the lorry remained ex parte. The insurer, who contested the case, did not let in any oral evidence and exhibited only Ex. B-1, which is the copy of the insurance policy. On the basis of the evidence, the Tribunal awarded compensation at Rs. 2,75,000/-. Hence, the present appeal.

4. The insurer did not question the cause of the accident. That the accident was on account of rash and negligent driving of the owner cum driver of the lorry thus is not in dispute. The insurer however questions not only the quantum of compensation but also contends that the death of the deceased was not due to the injuries sustained by him in the accident. Sri A. Ramakrishna Reddy, learned Standing Counsel for the insurer, further questioned the award on the ground that the claimant was not a dependant upon the deceased and that he therefore could not be awarded compensation towards loss of dependency for the death of the deceased.

5. The deceased was 65 years old at the time of his death as can be seen from Ex. A-1 certified copy of the First Information Report, Ex. A-2 certified copy of the charge-sheet and Ex. A-4 certified copy of the death certificate. The wife of the deceased predeceased her husband. The only heir of the deceased is the claimant. However, the insurer contended that the claimant cannot be considered to be a dependant upon the deceased albeit he is the sole legal heir of the deceased.

6. The claimant described himself to be 38 years old and as an agriculturist. The claimant as P.W. 1 did not whisper in his evidence that he was a dependant upon the deceased. In the cross-examination, there is a single reference to this aspect where the claimant as P.W. 1 denied the suggestion that he was not a dependant upon the deceased. Where it is not contended by the claimant that he is a dependant upon the deceased, I am afraid that no amount of compensation can be awarded towards loss of dependency and loss of expectancy of life.

7. The learned Standing Counsel for the insurer further contended that the very claim cannot be continued on account of the death of the deceased in view of the maxim "*actio personalis moritur cum persona*". Where the deceased died about five months after the accident, the learned Standing Counsel for the insurer contended that when the deceased died, the very right to sue the insurer as well as the owner cum driver of the lorry has ceased. It was observed in Law of Motor Accident Claims and Compensation by Dr. R.G. Chaturvedi (second edition p.691):

Obviously, the applicability of the maxim *actio personalis moritur cum persona*

being confined only to claims for personal injuries, without affecting the claims towards loss of estate of the deceased, the effect of the doctrine in motor accident cases brings about only a partial abatement as distinguished from total abatement of the claim. The total abatement results only where the legal representatives of the deceased party have not been brought on record within the prescribed period of limitation.

8. In Smt. Munni Devi, Babulal, Laluram, Munna and Hanuman Vs. New India Assurance Co. Ltd., Jaipal Kishori Lal and Shri Jaipal Singh, , the injured claimant suffered amputation of his right leg as a result of the injury sustained in a motor vehicle accident. He subsequently died on account of the natural cause while his claim was pending before the Court. The Delhi High Court observed that the claim did not wholly abate and that the parents of the deceased, who were partially dependent upon the deceased, were entitled to pursue the case and receive compensation awardable in the shape of loss of estate of the deceased.

9. Indeed, in Munni Devi (1 supra), the deceased laid the claim as an injured. Later, he passed away. In the case on hand, the very claim was made about three years after the death of the deceased. However, the ratio of the Delhi High Court in Munni Devi (1 supra) holds good. I therefore consider that the maxim *actio personalis moritur cum persona* has no application to the present case and that the claim by the son of the deceased is maintainable notwithstanding the doctrine of *actio personalis moritur cum persona*. However, it is to be examined whether the claimant is otherwise sustainable.

10. I have already concluded that the claimant is not a dependant upon the deceased. The claimant is not only a major son, but the claimant described himself as an agriculturist. Admittedly, the claimant is a married person with a child through the marriage. It is hard to swallow that such a claimant is a dependant upon the deceased. I agree with the contention of the learned Standing Counsel for the insurer that the claimant is not a dependant upon the deceased and that consequently the claimant is not entitled to any compensation towards the loss of dependency, loss of income and loss of future expectancy of life.

11. The Tribunal considered that the deceased was earning Rs. 3,000/- per month and deducted 1/3rd of the income of the deceased towards his personal and living expenses. The Tribunal applied multiplier "5" to the case as the deceased was 65 years old at the time of his death and arrived at an amount of Rs. 1,20,000/- as compensation towards loss of dependency, loss of income and loss of expectancy of life. I see no reason to differ with the calculation adopted by the Tribunal. However, as the claimant is not a dependant upon the deceased, the claimant is not entitled to any amount towards loss of dependency.

12. I may also point out that the very question of the doctrine of *actio personalis moritur cum persona* comes into play when it is shown that the deceased did not die on account of the injuries sustained by him in the accident. If the deceased

had died owing to the injuries sustained in the accident, the case would fall within Section 166 of the Motor Vehicles Act, 1988, with the doctrine having no application. Sri Y. Pulla Rao, learned counsel for the claimant, contended that the deceased died on account of the injuries sustained by him in the accident.

13. Indeed, the deceased died about five months after the accident. The deceased sustained grievous injuries. He suffered as many as three fractures and three lacerations. Be that as it is, the death of the deceased was not followed by any post-mortem examination. P.W. 4 is an Orthopaedician of Yasoda Hospital, Malakpet, Hyderabad. He treated the deceased while he was undergoing treatment at Yasoda Hospital, Malakpet, Hyderabad. P.W. 4 deposed that the injuries sustained by the deceased were severe and serious in nature on account of the age of the deceased. Indeed, the deceased was 65 years old. However, P.W. 4 did not testify that the death of the deceased was due to the injuries sustained by him in the accident. Where the death of the deceased was not while the deceased was undergoing treatment nor were the death very proximate to the date of the accident, I am afraid that it cannot be assumed that the death of the deceased was on account of the injuries sustained by him in the accident without evidence in that regard. In the absence of post-mortem examination and other evidence, I hold that the claimant failed to prove that the death of the deceased was due to the injuries that he sustained in the accident. This is the reason why the doctrine *actio personalis moritur cum persona* had to be examined with reference to the decision of the Delhi High Court in *Munni Devi* (1 *supra*).

14. Although the death of the deceased was not due to the injuries sustained by him in the accident, admittedly the deceased sustained injuries and underwent treatment. The deceased sustained three fractures and three lacerations. For each of the fractures, award of compensation at Rs. 25,000/- would be just and proper. The deceased would have been entitled to compensation at Rs. 75,000/- towards pain and sufferance for the three fractures. He also would have been entitled to compensation at Rs. 9,000/- towards pain and sufferance for the three simple injuries at the rate of Rs. 3,000/- per simple injury. The deceased would have been entitled to compensation, thus, at Rs. 84,000/- towards pain and sufferance had he been alive and laid claim. Once the deceased died, the claim of pain and sufferance becomes unsustainable so far as the dependants, the legal representatives or the heirs of the deceased are concerned. Consequently, the claimant is not entitled to any amount of compensation towards pain and sufferance for the death of his father.

15. The claimant produced Exs. A-7 to A-11 medical bills to a total tune of Rs. 1,12,961/-. The Tribunal awarded compensation at Rs. 1,50,000/- towards medical expenses taking other incidental medical expenses into consideration. The learned Standing Counsel for the insurer contended that it would be unjust to award compensation beyond the medical bills. As rightly submitted by the learned counsel for the claimant, some of the medical expenses would obviously

be not covered by the bills owing to the exigency of the circumstances. I therefore consider that it would be just and proper to accept the award of compensation at Rs. 1,50,000/- towards medical expenses. The claimant is entitled to Rs. 2,000/- towards funeral expenses and Rs. 3,000/- towards transport charges. On account of the age of the deceased, I consider that the claimant is also entitled to Rs. 5,000/- towards loss of estate.

16. Regarding the question of loss of dependency, it is already found that there is no proof that the claimant was dependant upon the deceased. The learned counsel for the claimant submitted that the claimant would be entitled to compensation, albeit confining it to Rs. 50,000/- even if the claimant is not a dependant upon the deceased.

17. In United India Insurance Co. Ltd. Vs. Kasiammal and Others, the claimants were married sons and daughters of the deceased. They were not dependants upon the deceased. A learned single Judge of the Madras High Court considered that the claimants would be entitled to "no fault" liability amount when they are not the dependants upon the deceased.

18. A learned single Judge of the Delhi High Court in an unreported judgment in Usha Rani Jain vs. Raj Pal (F.A.O. No. 79 of 1996, dated 01-6-2010) observed that the minimum liability of the Insurance Company was increased to Rs. 1,50,000/- from Rs. 50,000/- when the Motor Vehicles Act, 1939 was amended in 1982. However, the present case is under the provisions of the Motor Vehicles Act, 1988. u/s 140 of the Motor Vehicles Act, 1988, "no fault" liability is Rs. 50,000/- with effect from 14-11-1994. Consequently, the claimant shall be entitled to compensation at Rs. 50,000/- only under the head of "no fault" liability albeit the claimant is not a dependant upon the deceased.

19. Consequently, the claimant is entitled to compensation at:

As the death was in 2006, the claimant shall be entitled to interest at 7.5% per annum as awarded by the Tribunal. Accordingly, this appeal is allowed in part reducing the award of compensation awarded by the Tribunal to Rs. 2,10,000/- (Rupees two lakhs and ten thousand only) together with interest at 7.5% per annum from the date of the petition till deposit. The owner cum driver of the offending lorry and the insurer, who are jointly and severally liable to answer the claim, shall deposit the awarded amount within one month from today. After such deposit, the claimant shall be entitled to withdraw the entire awarded amount together with accrued interest having regard to the amount spent towards medical expenses. No costs.