

(2013) 11 AP CK 0011
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 475 of 2005

The Oriental Insurance Company

APPELLANT

Vs

Smt. Aluru Rama Devi and Others

RESPONDENT

Date of Decision : 05-11-2013

Acts Referred:

Citation : (2013) 11 AP CK 0011

Final Decision : Partly Allowed

Judgement

Dr. B. Siva Sankara Rao, J.—The Oriental Insurance Company Limited (2nd respondent in the claim petition) filed this appeal, having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Cuddapah, (for short, "Tribunal") in M.V.O.P. No. 930 of 2001 dated 09.07.2004, awarding compensation of Rs. 7,75,000/- (Rupees seven lakh seventy five thousand only) with 9% p.a. interest as against the claim of the respondent Nos. 1 to 5 (claimants in the claim petition i.e. wife, three daughters and mother of deceased) of Rs. 10,00,000/- (Rupees ten lakh only), in the claim petition u/s 166 of the Motor Vehicle Act, 1988 (for short, "the Act").

2. Heard Sri Manne Haribabu, learned standing counsel for the appellant, Sri B. Sudhakar Reddy, learned counsel for the respondent Nos. 1 to 4, who are also representing the interest of 5th respondent-claimant even not served from the deemed service as per order of the Court dated 04.01.2012; so far as respondents 6 to 8 concerned, it was mentioned in the cause title that respondent Nos. 6 to 8 (Owner of crime lorry, owner of jeep and Insurer of jeep), are not necessary parties to the appeal. In this regard, in Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others, , the Division Bench of this Court at para-12 held for deciding the that statutory liability of the insurance company, in the absence of the owner of the crime vehicle, appeal filed by the claimants or Insurer can is maintainable as held in The Branch Manager, The New India Assurance Co. Ltd. Vs. Harijana Babakka and Others, .

3. 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 was erred in arriving wrong conclusion on the huge quantum of compensation awarded by not going through the facts properly with regard to the contributory negligence on the part of the driver of the jeep in which the deceased was proceeding, not properly going through the oral and documentary evidence on record, failed to consider that the O.P. No. 902 of 2001 on the file of Tribunal, Proddatur arose out of same accident, failed to deduct 1/3rd salary of the deceased and apply correct multiplier, hence to set aside the award by allowing the appeal whereas it is the contention of the claimants (appeal respondents 1 to 5) that the award of the Tribunal no way requires interference but for no cross-objections to enhance compensation prayed for and sought for dismissal of the appeal. The parties are being referred as arrayed before the Tribunal for sake of convenience.

4. Now the points that arise for consideration in the appeal are:

1. Whether the compensation awarded by the Tribunal is highly abnormal and requires interference by this Court while sitting in appeal against the award and if so what amount to arrive a just compensation and with what rate of interest?

2. To what result?

Point-1:

5. The facts of the case before the Tribunal are that, on 28.04.2001 at 6.15 p.m. the lorry bearing No. AP 27-U-2689 belongs to (appeal 6th respondent) the 1st respondent in the claim petition insured with the (appellant) 2nd respondent in the claim petition and the opposite coming jeep AP 21 C 4499 colluded in which the deceased by name Mandem Lakshmi Narasimha Sastry, s/o M.Narasaiah, aged 45 years, (as per Ex.A.8 medical certificate) working as Postman along with some others was proceeding; as a result the deceased was succumbed to injuries while undergoing treatment, which occurrence is covered by Ex.A.1 First Information Report in Cr.No.28 of 2000 u/s 337 and 338 IPC and Ex.A.3 charge sheet against the lorry driver. The learned Tribunal basing on the oral and documentary evidence on record, awarded in all compensation of Rs. 7,75,000/- (Rupees seven lakh seventy five thousand only) out of Rs. 10,00,000/- against the lorry owner and Insurer-the 1st and 2nd respondents in the claim petition jointly and severally. The same is in dispute mainly for not fixing composite negligence against driver of both vehicles and on quantum of compensation as excessive and unjust.

6. The fact that the jeep and lorry were colluded while proceeding in opposite direction to each other not in dispute. As per claim petition the jeep was while overtaking RTC bus, the accident occurred. P.W.2 so called eye witness also deposed the same, but for saying the lorry driver's rash and negligent driving contributed the accident by dashing the jeep. Ex.A.1 FIR registered was on the report of one of injured persons among occupants of the jeep. The P.Ws.1,3 and

4 are not the eye witnesses to the accident. R.W.1 employee of Insurer of the jeep did not speak anything but for saying the Ex.A.1 FIR and Ex.A.3 chargesheet are against the lorry driver and not the jeep driver. Even the FIR speaks what P.W.2 deposed. None of R.W.1 and P.w.1 filed any MV report or rough sketch of scene of offence. A perusal of above evidence on its face speaks there is a composite negligence of drivers of both vehicles as jeep driver also at fault in overtaking bus without observing opposite coming lorry and even to say bus driver gave signal to overtake, the bus driver also at fault and it is not possible to believe of despite lorry coming in opposite direction bus driver gave signal to jeep driver to overtake and even finder of last opportunity and duty lies on jeep driver as well as lorry driver. No doubt the contributory negligence of two vehicles involved to decide at what proportion depends upon several facts like size of vehicles, width of road and its condition, manner of accident i.e. when it was overtaking of bus by jeep from behind, dashed by opposite coming lorry to say at least 25% of contributory negligence on part of jeep driver to say remaining 75% on lorry driver and thus the finding of the Tribunal in fixing total negligence on lorry driver is unsustainable and baseless as FIR and chargesheet by themselves not evident and will not outweigh P.W.2's evidence referred supra the eye witness. From the above, the next aspect to decide is what is the just compensation the claimants are entitled against the lorry owner and Insurer on one part and against jeep owner and Insurer on the other part.

7. 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 *Charles 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 monetary 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*, 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.

8. From the above legal position and coming to the factual matrix, the deceased was aged 45 years, as per P.W.1 and 3 evidence and as per Ex.A.2 medical certificate working as Postman with earnings of Rs. 4,664/- p.m as per Ex.A.13 pay particulars. Besides that the earnings of deceased as purohit even taken an average at Rs. 1000/- p.m. from seasonal and only additional avocation to main job as postman, it comes to Rs. 5,664/- and since the claimants legal representatives as per Ex.A.4 certificate are wife(P.W.1), three minor children and mother of deceased being dependants on the deceased earnings, after deducting 1/4th towards personal expenses out of Rs. 5,664/-; it comes to Rs. 4248/- p.m. and 30% increase taken therefrom from the age of the deceased towards future prospective earnings, it comes to Rs. 5522.40ps per month and rounded to Rs. 5522/- p.m. x 12= Rs. 66,264/- x 14(multiplier) that to be taken as per *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, followed in *Rajesh and Others Vs. Rajbir Singh and Others*, , then it comes to Rs. 9,27,696/-, for loss of consortium of Rs. 1,00,000/- to 1st claimant, for funeral expenses minimum of Rs. 25,000/-, for care, guidance, love and affection to the three minor children of each Rs. 1,00,000/-, in all comes to Rs. 10,92,700/- out of which the 75% contributory negligence against the lorry owner and Insurer comes to only Rs. 8,19,525/- and that the jeep owner and Insurer Rs. 2,73,175/-. Thus, the compensation awarded by the Tribunal of Rs. 7,75,000/- is no way unjust and unreasonable and for this Court while sitting in appeal there is nothing to interfere but for to say the remaining 25% contributory negligence amount to be recovered by separate appeal by claimants against the respondents 3 and 4 of claim petition.

9. Coming to the rate of interest, though the interest at 9% per annum awarded by the Tribunal even not in dispute, from the settled proposition of law in *Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others*, and *Sarla Varma (supra)* and from the latest expression of the Apex Court in *Rajesh (Supra)*, interest is awarded at 7 1/2% per annum by modifying and reducing from 9% per annum awarded by the Tribunal. Accordingly, Point-1 for

consideration is answered.

Point -2:

10. In the result, the appeal is partly allowed, while holding that there is contributory negligence of 25% on the jeep driver for its owner and Insurer to make liable for Rs. 2,73,775/-. The appellant-Insurer of lorry is liable to indemnify the lorry owner for the 75% negligence of the lorry owner for the 75% negligence of the lorry driver as the 75% liability comes to Rs. 8,19,525/- to the claimants by confining out of the claim against the respondents 1 to 4 for Rs. 10,00,000/-, to the awarded sum of Rs. 7,75,000/- against the appellant-Insurer and Insured of the lorry (claim petition R.1 and R.2) the appeal is dismissed confirming the quantum of compensation of Rs. 7,75,000/- however, by reducing the rate of interest thereon from 9% p.a. to 7 1/2% p.a. from the date of petition (MVOP) till realization/deposit with notice. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs in the appeal.