
(2014) 08 AP CK 0004

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 2601 of 2009

The United India Insurance Co. Ltd.

APPELLANT

Vs

K. Kistamma

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166(1)(c)

Citation : (2014) 08 AP CK 0004

Hon'ble Judges : U. Durga Prasad Rao, J

Bench : Single Bench

Advocate : G. Ramachandra Reddy, Advocate for the Appellant; G. Madhu, Advocate for the Respondent

Final Decision : Dismissed

Judgement

U. Durga Prasad Rao, J.—Challenging the quantum of compensation, 2nd respondent in the OP/Insurance Company preferred MACMA.

2. On factual side, one K. Srinivas, 30 years old bachelor died when a tanker lorry hit him when its driver in the process of reversing the vehicle drove it in a rash and negligent manner and hit the deceased. The claimants who are the parents of the deceased filed M.V.O.P. No. 272 of 2006 and claimed Rs. 4,00,000/- as compensation against respondents 1 and 2 who are the owner and insurer of the offending vehicle. 1st respondent/owner remained ex parte and 2nd respondent/Insurance Company contested the matter. After trial, on consideration of evidence on record, the Tribunal awarded total compensation of Rs. 2,77,000/- with costs and interest at 6% p.a. against respondents.

Hence the appeal by Insurance Company challenging the compensation as exorbitant.

3. The parties in this appeal are referred to as they stood before the Tribunal.

4. Heard arguments of Sri G. Ramachandra Reddy, learned counsel for appellant/

Insurance Company and Sri G. Madhu, learned counsel for respondents/claimants.

5a. Challenging the compensation, learned counsel for appellant firstly argued that the Tribunal erred in fixing the notional income of the deceased as Rs. 100/- p.m. Instead, it ought to have fixed his annual income at Rs. 15,000/- following Second Schedule of Motor Vehicles Act. He further contended that the Tribunal ought to have deducted 50% towards personal expenditure of the deceased in view of the decision in Syed Basheer Ahamed and others vs. Mohd. Jameel and another. It deducted only 1/3rd, he argued. His further submission is that second claimant who is the father of the deceased was not a dependant and hence he is not entitled to compensation. On this aspect, he relied upon the following decisions:

i) Shamsunder Tiwari @ Shamlal Tiwari and others vs. Narsimha Reddy and another

ii) Gosala Ramadevi and others vs. P. Sivanarayana and another b) Finally he contended that the vehicle involved in the accident was AP 28 U 560 but the vehicle insured was AP 28 V 560 and the same was falsely implanted to gain compensation.

He thus prayed to allow the appeal and reduce the quantum of compensation.

6. Per contra, while supporting the award, learned counsel for respondents/claimants firstly argued that the deceased was a young person having the potentiality to earn more than Rs. 100/- per day by doing labour work. In spite of it, the Tribunal took a moderate amount of Rs. 100/- per day and fixed his notional income as Rs. 3000/- p.m. and therefore, the Tribunal cannot be found fault. He further submitted that both the parents who are old aged people are his dependants and hence they deserve compensation. He thus prayed for dismissal of the appeal.

7. In the light of above rival arguments, the point for determination in this appeal is:

Whether the compensation awarded by the Tribunal is just and reasonable or needs interference?

8. POINT: The first contention of the appellant is that the tribunal ought to have fixed notional income of the deceased at Rs. 15,000/- per annum basing on the Second Schedule of the M.V. Act and erred in fixing his income as Rs. 100/- per day.

a) The contention of counsel for claimants is that the notional income of Rs. 15,000/- as provided in Second Schedule of the M.V. Act shall be made applicable to the non-earning persons such as old, bed ridden, sick and infirm who had no income, but not to those persons who are able bodied persons and by their exertions can earn some income. In those cases, the Court has to fix

notional income depending upon the age, earning capacity and avocation of such persons. In such an event the Court need not be carried away by the second schedule. On this aspect he relied upon the decision reported in Vishan Das and others vs. Suwa Lal and others. I find force in the submission of counsel for claimants. The notional income of Rs. 15,000/- as provided in item No. 6 of Second Schedule appended to M.V. Act applies to those persons who had admittedly no income prior to the accident. The heading to Item No. 6 which reads as Notional income for compensation to those who had no income prior to accident, itself is self-explanatory in this regard. Should we give a plain meaning to the words who had no income prior to accident we understand that they refer to those persons who admittedly had no income prior to accident. We can visualize those persons as old and infirm, bed ridden by sickness and those who had no earning capacity. In respect of those persons, notional income has to be taken as Rs. 15,000/- for computation of compensation. However, honestly speaking the said notional income will not apply to other persons who are able bodied persons and having earning potentiality and those who are employed in one or other avocation and earning some income. In respect of such persons even if there is no concrete evidence regarding their earnings, the Court shall make a reasonable estimate of their earnings having regard to their age, nature of occupation etc. My view gets fortified from the observation of learned Judge in the cited decision reported in Vishan Dass case (supra) which is as follows:

Once there is evidence of the fact that the deceased was working, the learned Tribunal can safely presume that the deceased was having an income. Item 6 of the Second Schedule attached to the Motor Vehicles Act, 1988 (henceforth to be referred to as "the Act" for short) speaks of "Notional income for compensation to those who had no income prior to accident" (emphasis added). Hence, a notional income can be presumed only in case the deceased had "no income" prior to his death by accident. However, in case the deceased was employed, he would naturally, be earning some amount. In other words, he would have "some income". Hence, "notional income" cannot be presumed in such a case. To apply a notional income in those cases where there is lack of evidence with regard to the income of the deceased, is to misread and misapply item 6 of the Second Schedule of the Act. Therefore, the contention raised by Mr. Bhandari, about the application of notional income, is unacceptable. However, learned Tribunal should have also considered the fact that even for a labourer, the income does increase in the future. Thus, learned Tribunal should have added at least 50 per cent of the income to the assessed income in order to arrive at the correct compensation.

b) In the instant case, it is pleaded deceased was aged 28 years and earning Rs. 3,000/- per month by working as labourer (adda coolie) and fending his parents who are dependants. In the evidence of PW1 also she deposed in similar lines. In Ex. A4 postmortem report deceased was shown as 25 years old person. So, the facts and evidence show that deceased was an young and able bodied person having earning potentiality. Though there is no recorded evidence regarding his earnings, still there is evidence to the effect that he was earning some income.

Therefore, the tribunal was right in considering him as unskilled labourer and earning Rs. 100/- per day.

c) Then the second contention of the appellant is that the tribunal ought to have deducted 50% of the earnings towards personal and living expenses of deceased. It is true that in the cited decision in Syed Basheer Ahameds case (supra) and also in Smt. Sarla Verma and Others vs. Delhi Transport Corporation 2009 ACJ 1298 (SC) : AIR 2009 SC 3104 and another the Apex Court held that in case of a bachelor 50% of his earnings is to be deducted. However, it should be noted that the tribunal while fixing the monthly earnings of the deceased at Rs. 3,000/- has not taken into consideration the component of his future prospects. Thereby, the compensation was reduced.

9. In Santhosh Devi vs. National Insurance Co. Ltd. the Apex Court observed that even in case of self-employed and fixed wage persons future prospects have to be taken into consideration and in that regard the Supreme Court differed with the observation made in the earlier decision in Sarla Verma's case (supra). So, it shows that tribunals and courts have to consider the future prospects for computation of compensation. Unfortunately that was not done in the instant case and thereby compensation was lowered. If 50% of the earnings of the deceased were to be deducted, as argued by the appellant as against 1/3rd deducted by the tribunal, that would result in further injustice to the claimants. Therefore, for this reason this Court declines to deduct 50% towards personal expenditure of the deceased. For another reason also, this Court disapproves deduction of 50%. In Sarla Verma's case (supra) the Apex Court while advising deduction of 50% towards personal expenditure of a deceased bachelor, however, observed that in case of exceptional circumstances like the deceased had to feed more mouths like widowed mother and large number of younger siblings, the personal expenditure can be restricted to 1/3rd. In the instant case, the plea of claimants who are the parents of the deceased is that they are depending on the earnings of the deceased and his death thrown them into miserable condition. In the evidence of PW1 the mother, she deposed that during his life time the deceased used to look after herself and her husband by arranging bread and butter. Their dependency is not challenged in the cross-examination. As the deceased had to support his parents, it would be natural for him to use 1/3rd of his income for his personal expenditure.

10. The next contention is that second claimant who is the father of the deceased is not a dependent and hence he is not entitled to compensation. I am unable to agree with this contention. It is already held supra that as against the plea of the petitioners that they are dependants of the deceased, there was no contra evidence. Therefore, both the claimants can be taken as his dependants. Even otherwise dependency alone is not a factor to consider the entitlement of compensation. The claimants are admittedly the legal representatives of the deceased. u/s 166(1)(c) of M.V. Act, legal representatives can file the claim petition irrespective of the fact whether they are dependants or not. In Gujarat

State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai, Apex Court allowed the claim of the elder brothers of a deceased boy of about 14 years on the ground that they were the legal representatives of the deceased, though they were not his dependants. Hence the contention of the appellant cannot be upheld.

11. Finally, it was argued about difference in the vehicle number. This argument cannot be approved because the tanker lorry involved in the accident was AP 28 V 560 but the claimants by mistake mentioned its number as AP 28 U 560. Later they got amended the registration number as AP 28 V 560 as per orders in I.A. No. 591 of 2007. Hence there is no ambiguity in it.

12. In the result, I find no merits in the appeal and accordingly, the same is dismissed by confirming award passed by the Tribunal in OP No. 272 of 2006. There shall be no order as to costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.