

(2014) 04 AP CK 0039
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 308 of 2010

Todkar Gananeswari Bai and Another	Vs	APPELLANT
Mannela Bhaskar Rao and Another		RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Citation : (2015) ACJ 1710

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

Bench : Single Bench

Advocate : V.R. Reddy Kovvuri, Advocate for the Appellant; N.S. Bhaskar Rao, for Respondent No. 2, Advocate for the Respondent

Final Decision : Allowed

Judgement

U. Durga Prasad Rao, J.—a) Facts some times fierce than fiction appears woefully became true in the case of 28 years old Kamalakar Rao, a young C.R.P.F. General Constable who came to his native town Kadapa to attend the marriage of his sister to be held on 31.01.2007, died on the previous night of the marriage while returning along with his brother-in-law on a motorcycle from Dattasai Lodge to Almaspet function hall when his motorcycle was dashed by an opposite coming lorry bearing No. AP 02 V 0418. What should have been a marriage morning became mourning for his parents who are the claimants herein, other relations and friends. Ultimately the claimants filed M.V.O.P. No. 274 of 2007 on the file of MACT-cum-Principal District Judge, Kadapa (for short "the Tribunal") against respondents 1 and 2 who are the owner and insurer of the offending lorry and claimed Rs. 8,00,000/- under different heads.

b) Respondents 1 and 2 filed counters and opposed the claim. R.1 mainly pleaded that his vehicle was insured with R.2/Insurance Company and the Insurance Company has to indemnify his liability if any. Whereas R.2 denied all the material averments in the petition and mainly urged that accident was occurred due to the fault of the deceased himself as while riding the motorcycle he was involved in talking with the pillion rider and he was in a hurry to attend

the function hall and in that process, he failed to observe the oncoming vehicles and went and dashed the lorry. On this plea, R.2 disowned its liability. R.2 denied the age, employment and income of the deceased. Finally, R.2 contended that the claim is excessive and exorbitant.

c) During trial P.Ws. 1 to 3 were examined and Exs. A.1 to A.9 and Ex. C.1 were marked on behalf of claimants. No evidence was adduced by the respondents.

d) Perusal of the award would show that So far as issue No. 1 is concerned, the Tribunal relying upon the evidence of PW. 2--pillion rider-cum-eye witness coupled with documentary evidence such as Ex. A.1--F.I.R., Ex. A.5--charge sheet has held that the accident was occurred due to the rash and negligent driving by the driver of the offending lorry.

e) Quantum of compensation is concerned, the Tribunal granted Rs. 15,000/- towards loss of estate, Rs. 2,000/- towards funeral expenditure. Loss of dependency is concerned, the Tribunal basing on the evidence of PW. 3 and Ex. A.9--salary certificate accepted the gross salary of the deceased as Rs. 8,481/- and net salary as Rs. 7,251/-. Multiplier is concerned, the Tribunal having regard to the age of 1st claimant as 49 years, fixed multiplier "13" and added one more unit to it towards future prospects of the deceased. Thus by multiplying the annual income of the deceased with multiplier "14" and deducting 2/3rd from it towards personal expenditure of the deceased, awarded balance amount of Rs. 4,06,056 (Rs. 7,251/- x 12 x 14 x 1/3rd) as compensation under the loss of dependency. Thus, the Tribunal awarded a total amount of Rs. 4,23,056/- under different heads as follows:

Hence, the appeal by the claimants on the ground of inadequacy of compensation.

2. Heard arguments of Sri V.R. Reddy Kovvuri, learned counsel for appellants/ claimants and Sri N.S. Bhaskar Rao, learned counsel for R.2/ Insurance Company. Even though notice to the R.1 was served, none appeared on his behalf.

3. a) Criticizing the quantum of compensation awarded as too low, learned counsel for appellant firstly argued that in computing the compensation under the head loss of dependency the Tribunal erred in taking only the net salary of the deceased for computation instead of his gross salary. He submitted that as per Ex. A9--salary certificate, gross salary of the deceased was Rs. 8,481/- and after applying deductions towards GPF and GIS totaling Rs. 1,230/-, the net salary was Rs. 7,251/- and the Tribunal erroneously took the net salary into consideration. The two deductions are in fact contributions made by him and therefore, they ought to have been added to his salary. Since only net salary was taken for computation, the compensation under the head loss of dependency was drastically reduced.

b) Secondly, learned counsel argued that the Tribunal erred in accepting

mother's age for selection of multiplier. In the light of recent decision of a Division Bench of this Court in N. Surender Rao and Others Vs. B. Swamy and Another, , the age of the deceased should be taken into consideration for selection of multiplier.

c) Thirdly, the Tribunal erred in deducting 2/3rd from the earnings of the deceased and as per the judgment rendered by the Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, 50% has to be deducted since the deceased was bachelor.

d) Finally, he argued that the Tribunal granted Rs. 2,000/- towards funeral expenses and going by the decision reported in Rajesh and Others Vs. Rajbir Singh and Others, the claimants are entitled to more amount under the said head. Thus, he prayed to enhance the compensation by allowing appeal.

4. Per contra, learned counsel for 2nd respondent/Insurance Company while supporting the award argued that the Tribunal rightly took the net salary of the deceased for computation purpose and it also rightly took mother's age for selection of multiplier and there is no need to revise the same.

5. 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 and needs enhancement?

6. a) POINT: The accident, involvement of motor cycle and offending lorry and death of the deceased are all admitted facts.

The Tribunal having regard to the evidence on record found fault with the driver of the lorry and said finding since not challenged by either owner of the vehicle or the insurer, became final. Hence, only point for consideration in this appeal is whether the quantum of compensation awarded by the Tribunal is just and reasonable and needs interference of this court. In this context, the contentions raised by the appellant have to be scrutinized.

b) The first argument is that the Tribunal erred in taking the net salary of the deceased in stead of gross salary. As per the evidence of PW3--S.A. Jabbar, Addl. DIGP and Ex. A-9--salary certificate the last pay drawn by the deceased was as follows:

The same has not been challenged. In view of the above evidence, it is clear that the deceased was drawing gross salary of Rs. 8,481/-. From this deductions of Rs. 1200/- towards GPF and Rs. 30/- towards GIS were being made. In my view, these two deductions are in fact, contributions made by the deceased and they are only deferred payments which the deceased would get in future. Unlike statutory deductions like Income Tax and Professional Tax, these amounts are not non-reimbursables. As rightly argued by the learned counsel for appellant the Tribunal instead of taking net salary ought to have taken gross salary of Rs.

8,481/- for computation.

c) In a decision reported in Sunil Sharma v. Bachitar singh 2013 ACJ 1441 the Apex Court held that EPF and GIS should not be deducted from the gross salary. It held thus:

Based on the aforementioned judgments, we are of the view that deductions made by the Tribunal on account of HRA, CCA and medical allowance are done on an incorrect basis and should have been taken into consideration in calculation of the income of the deceased. Further, deduction towards EPF and GIS should also not have been made in calculating the income of the deceased.

Hence, the gross salary of Rs. 8,481/- of the deceased is taken up for computation of compensation.

d) Then coming to selection of multiplier, as already stated supra, the Tribunal took the age of the mother (first claimant) and selected 13 as multiplier and added one unit towards future prospects of the deceased.

e) In the cited decision in N. Surender Rao v. B. Swamy (supra) a Division Bench of this Court held that age of the deceased bachelor shall alone be taken into consideration but not the age of the dependents parents for selection of multiplier. In view of this decision, the multiplier selected by the Tribunal on the basis of age of the first claimant cannot be countenanced. Hence, the age of the deceased is taken as criteria for selection of multiplier. The deceased was said to be aged 28 years. However, though the deceased was an educated person, the claimants have not filed his academic certificate in proof of his age. Of course, in Ex. A6--driving licence his date of birth is mentioned as 24-06-1979. Hence going by it the age of the deceased is accepted as 28 years. As per the Sarla Verma's case (supra) multiplier 17 is provided therein for the deceased in the age group of 26 to 30 years. Hence the said multiplier is accepted.

f) Hence, by multiplying the annual income of the deceased with multiplier 17 we will arrive his total earnings at Rs. 17,30,124/- (Rs. 8,481 x 12 x 17). From this 50% has to be deducted towards personal expenditure of the deceased as directed in Sarla Verma's case (supra) since the deceased was a bachelor. On such deduction of 50%, we will arrive the net income at Rs. 8,65,062/-. The said amount is awarded as compensation for the loss of dependency.

h) Then funeral expenditure is concerned, the same is enhanced from Rs. 2,000/- to Rs. 10,000/-.

Thus the total compensation payable to the claimants under different heads can be stated as follows:

7. It may be noted that compensation claimed by the claimants is Rs. 8 lakhs. However, on appreciation of facts, evidence and law they are found entitled to Rs. 8,90,061/-. Since the instant appeal is preferred by the claimants for enhancement of compensation and as the Court found that they are entitled to a

just and reasonable compensation of Rs. 8,90,062/- the same is awarded. The appellants/claimants shall pay the additional court fee required.

8. In the result, MACMA is allowed and ordered as follows:

- a) The compensation granted by the Tribunal is enhanced by Rs. 4,67,006/- (8,90,062/- minus 4,23,056/-) rounded off to Rs. 4,67,000/-(Four lakhs sixty seven thousand only) with proportionate costs.
- b) The enhanced compensation amount shall carry simple interest at 6% per annum from the date of OP till the date of realization.
- c) The respondents are directed to deposit the compensation amount within three months from the date of this judgment, failing which execution can be taken out against them. No costs in the appeal.
- d) The appellants shall deposit the additional court fees within one month from the date of this judgment.

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