
(2009) 06 AP CK 0066

In the Andhra Pradesh High Court

Case No : C.M.A. No's. 1299 and 1526 of 2001

V. Vijayalaxmi and others

APPELLANT

Vs

Md. Nazeemuddin and another

RESPONDENT

Date of Decision : 09-06-2009

Acts Referred:

Citation : (2011) ACJ 1356

Hon'ble Judges : B. Chandra Kumar, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : P. Ramakrishna Reddy, for the Appellant; A. Malathi, for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—These two appeals by the claimants and insurance company directed against the same order and decree dated 15.2.2001 of the Motor Accidents Claims Tribunal-cum-Fifth Additional Chief Judge, City Civil Court, Hyderabad, made in O.P. No. 438 of 1999 were heard together and disposed of by this common judgment.

2. For brevity the parties are hereinafter referred to as "claimants" and "insurance company".

3. The husband of the claimant No. 1 and the father of the claimant Nos. 2 to 4 was working as Assistant Grade-II in FCI Godown, Cherlapalli, while going by walk on 23.1.1999 at 7 p.m. the lorry owned by respondent No. 1 bearing No. ABT 1143 driven by its driver in high speed and in a negligent manner coming from Habsiguda towards Mallapur dashed the deceased. As a result he sustained fracture to both legs, hands and shifted to Andhra Mahila Sabha Hospital initially and later to the Nizam's Institute of Medical Sciences where he died on 6.2.1999. At the time of accident and untimely death the deceased was aged about 47 1/2 years. Widow of the deceased and minor children filed the above O.P. claiming compensation of Rs. 18,00,000 in which the respondent No. 1, lorry

owner, remained ex parte and respondent No. 2, insurance company obtained permission to contest the claim in I.A. No. 1172 of 2000 which was allowed on 8.12.2000.

4. The insurance company filed a counter opposing the claim of the claimants contending that accident took place due to rash and negligent driving of the lorry driver and the claim is exorbitant.

5. In order to prove the compensation the widow of the deceased was examined as PW 1 and one Mira Shareef, eyewitness to the incident, was examined as PW 2 and Exhs. A1 to A14 were marked on behalf of the claimants. Except Exh. B1, copy of the insurance policy, no evidence was let in by the insurance company.

6. The Claims Tribunal after taking into consideration the fact that at the time of accident the deceased was aged about 4772 years; Exh. A5, the service certificate, and Exh. A6, salary certificate, to prove that deceased was drawing a sum of Rs. 11,534 per month and also taking into consideration Exh. A14, certificate showing that the deceased used to work as artist and participated in the programmes conducted by All India Radio, fixed the monthly income of the deceased at Rs. 15,000 ($\text{Rs. } 15,000 \times 12 \text{ months} = \text{Rs. } 1,80,000$) and after giving 1/3rd towards personal expenses net contribution made by the deceased to the family was arrived at Rs. 1,20,000 per annum and by applying multiplier 13 fixed the loss of dependency at Rs. 15,60,000 and awarded a sum of Rs. 15,000 towards pain and suffering, Rs. 15,000 towards loss of consortium, Rs. 15,000 towards loss to estate and another Rs. 15,000 for transportation, medical and incidental expenses; in all Rs. 16,20,000.

7. Feeling aggrieved by the fixation of compensation the insurance company filed C.M.A. No. 1526 of 2001 and being dissatisfied with the quantum of compensation the claimants filed C.M.A. No. 1299 of 2001.

8. Learned counsel for the insurance company contended that as per the salary certificate, Exh. A6, issued by the employer, after deducting various amounts the deceased used to get net salary at Rs. 5,657. Therefore, the same has to be taken into consideration towards contribution made by the deceased to the family. She further contended that multiplier 13 applied by the Tribunal is on higher side and only multiplier 8 has to be applied as per schedule laid down in *Bhagwandas Vs. Mohd. Arif*,

9. Mr. P. Ramakrishna Reddy, learned counsel for the claimants, contended that the Tribunal has not taken into consideration the future prospects and the pay revision which will take place once in 5 years having regard to the service left over by the deceased. In view of the same, double salary ought to have been taken by the Tribunal for calculating contribution of the deceased towards family. He fairly conceded that claimants restricted their claim to Rs. 18,00,000 and filed the appeal for difference of amount only. He also contended that Tribunal rightly applied multiplier 13. In support of his contention he placed reliance on the recent judgments of the Apex Court in *National Insurance Company Ltd. Vs.*

Indira Srivastava and Others, and Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

10. In view of the above submissions made by the learned counsel, the points that arise for consideration in this appeal are:

(1) Whether the net salary or gross salary has to be taken into consideration for the purpose of calculating contribution of the deceased towards family in a motor accident claim?

(2) Whether the multiplier 13 applied by Claims Tribunal when the age of the deceased is 4772 years is justified or not?

(3) Whether the claimants are entitled to further enhancement of compensation or not?

11. It is not in dispute that in order to arrive at the contribution made by the deceased to his family the claimants relied upon the salary certificate, Exh. A6, issued by the employer. The total salary earned by the deceased at the time of accident is Rs. 11,534. After deducting CPF, FPS, LIC and instalments towards conveyance advance, flood advance, HBA, etc. the net salary he used to get is Rs. 5,657.70. The CPF, FPS, LIC, conveyance advance and HBA are advances drawn by the deceased for the benefit of the family and discharging the debts incurred by him by way of deductions. Therefore, the same have to be taken into consideration while calculating net contribution made by the deceased except deducting the income tax.

12. The Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, increased the income by doubling the salary.

13. Recently the Apex Court in National Insurance Company Ltd. Vs. Indira Srivastava and Others, held that conveyance and other perquisites, namely, telephone facility, house accommodation, etc. have to be taken into consideration as income to determine loss of dependency.

14. In view of the same, we cannot accept the contention of the learned counsel for the insurance company that net salary alone has to be taken into consideration for arriving at the contribution made by the deceased to the family.

15. It was next contended by the learned counsel for the insurance company that in the absence of any acceptable evidence Claims Tribunal has committed an error in arriving at the income of the deceased at Rs. 15,000 per month.

16. The Apex Court recently in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, held that an addition of 50 per cent extra salary has to be added to the actual salary income of the deceased towards future prospects where deceased had a permanent job and was below 40 years and 30 per cent if the age of the deceased was 40 to 50 years for the loss of dependency.

17. It is not in dispute that the deceased was working as Assistant Grade-II and every 5 years pay scales will be revised and he is having 1272 years" leftover service. In view of the same, it is not unreasonable to add 30 per cent of the salary, i.e., Rs. 3,460 ($\text{Rs. } 11,534 \times 30/100 = \text{Rs. } 3,460$) which comes to Rs. 14,994 ($\text{Rs. } 11,534 + \text{Rs. } 3,460$) and rounded off to Rs. 15,000. Therefore, fixing the average earning of the deceased by the Tribunal needs no interference and the same has to be taken into consideration for calculating loss of dependency. There is no evidence that deceased regularly used to work as an artist and earned Rs. 30,000 per year. Further, the deceased being a government employee whether he was permitted to give such programmes is also not proved. We accordingly answer point No. 1 in favour of the claimants that gross salary, namely, Rs. 11,534, has to be taken for calculating loss of dependency after deducting 1/3rd towards personal expenses but not net salary as contended by the learned counsel for the insurance company.

18. The Apex Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, after taking note of the multiplier indicated in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, ; U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and New India Assurance Co. Ltd. Vs. Charlie and Another, in para 21 held that multiplier 13 has to be used for the age group of 46 to 50 years.

19. In view of the same, multiplier 13 applied by the Tribunal is justified and needs no interference. Point No. 2 is accordingly answered.

20. For the conclusions reached by us there is no legally acceptable evidence that the deceased was permitted to work as an artist for profit and gain being in government service. Therefore, the claimants are not entitled to any further enhancement. Point No. 3 is answered against the claimants.

21. In the result both the appeals are dismissed with no order as to costs.