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(2022) 09 TEL CK 0020

In the Telangana High Court

Case No : Motor Accident Civil Miscllaneous Appeal No. 201 Of 2016

Vannam Savithramma 4 Others APPELLANT

Vs

Mohd. Khaja Shareef HDFC ERGO General Insurance Company RESPONDENT

Date of Decision : 07-09-2022

Acts Referred:

Citation : (2022) 09 TEL CK 0020

Hon'ble Judges : P.Madhavi Devi, J

Bench : Single Bench

Advocate : P S P Suresh Kumar, T Mahender Rao

Final Decision : Partly Allowed

Judgement

1. This appeal is filed by the petitioners/appellants, challenging the award passed by the Chairman, Motor Accident Claims Tribunal – Cum III Additional District Judge, (F.T.C.) at Nalgonda (For Short, the Tribunal), in O.P.No.721 of 2010, dated 25.07.2012.

2. The appeal is filed by the claimants/dependants of the deceased Bikshamaiah who died in the Motor Vehicle accident that occurred on 04.05.2010. At the time of accident, the deceased was aged about 52 years and was allegedly earning Rs.8,000/- per month by doing kirana business and was contributing the same to his family members. The claimants filed the claim petition seeking compensation of Rs.2,50,000/-. The Tribunal after considering all the evidence observed that the claimants were entitled to a compensation of Rs.3,47,000/-. However, the compensation was restricted to the claim of Rs.2,50,000/-. Thereafter, the claimants have filed this appeal seeking enhancement of compensation to a sum of Rs.4,00,000/- and also filed an amendment petition to amend the prayer in the claim petition.

3. When the appeal came up for hearing along with amendment petition, the learned Standing counsel for respondents has objected to the same and

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submitted that under Section 173 of Motor Vehicles Act, an appeal can be filed before the Court only by an aggrieved party and where the claim of the claimants has been accepted in toto, there can be no grievance and hence no appeal can lie to the higher forum. In support thereof, he placed reliance upon the following case law:

1. Oriental Insurance Company Limited Vs. Yarava Lakshmi Devi 2009 (4) ALD 491,

2. National Insurance Company Limited Vs. B.Rama Goud and others 2004 (5) ALT 315,

3. K.Annaji Rao and another Vs. Md.Jaboar and another 2003 (6) ALD 452.

Therefore, according to him, the appeal itself is not maintainable. He also drew the attention of this Court to the valuation made by the claimants for arriving at the value of appeal and submitted that the claimants have taken it for granted as to the value of appeal without the petition for amendment being allowed by Court.

4. Learned counsel for the claimants, on the other hand, placed reliance upon various case laws for the preposition that the Tribunal even without there being an application by the claimants, should be awarded with just and reasonable compensation and therefore should have awarded the sum of Rs.3,47,000/- as computed by it, instead of restricting it to Rs.2,50,000/-. In support of his contention, he placed reliance on the following case law:

1. Nagappa Vs. Gurudayal Singh 2003 (2) SCC 274,

2. Deekonda Suresh Vs. D.Dharmaraju 2007 (4) ALT 704,

3. Un-reported Judgment in the case of B.Srinivasa Rao Vs. APSRTC in MACMA Nos.316 of 2011, 2523 and 4099 of 2012, dated 30.08.2019,

4. Latest Judgment of the Hon'ble Supreme Court in the case of Surekha and others vs. Santosh and others 2020 ACJ 2156,

5. Judgment of Ramla and Others Vs. National Insurance Company Limited and others 2019 (2) SCC 192.

5. Having regard to the rival contentions and the material on record, it is noticed that the dependants of the deceased had claimed only a sum of Rs.2,50,000/- towards compensation on his death in the accident. The Tribunal has restricted the award to Rs.2,50,000/- though it arrived at the just compensation at Rs.3,47,000/-. The Claimants did not take any steps to amend the prayer in the original petition during the pendency of the appeal. It was only before the High Court and that too in recent years that the dependants of the deceased filed this petition seeking enhancement of the compensation.

6. The contention of the learned standing counsel is right to the extent that a claimant cannot be said to be aggrieved if his claim has been accepted in toto

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and therefore, he does not have a right of appeal. That could be the case if the total amount claimed by the claimants has to be accepted as just and reasonable compensation to be allowed and has been allowed accordingly. But in the case before this Court the Tribunal has arrived at a higher figure as eligible compensation allowable to the claimants, but restricted to the sum claimed by the claimants. This issue has been dealt with by the High Court and the Apex Court in various cases. The Courts have held that the Tribunal should not adopt a hyper technical approach in awarding a just and reasonable compensation, even it was not claimed by the claimants in the claim petition.

7. The Judgment of the Hon'ble Supreme Court in the case Nagappa Vs. Gurudayal Singh (cited supra) was delivered in the year 2003 itself, whereas the appeal before the Tribunal was of the year 2010, i.e., subsequent thereto. Therefore it presumed that the lower Court/Tribunal was aware of the said judgment and without following the said judgment, has restricted the compensation to the amount in the claim petition. The judgment of the Hon'ble Supreme Court is the law of the land and is binding on all the Courts Sub-ordinate to it and they have to be followed in its true letter and spirit. In view thereof, by holding that the Tribunal is not prohibited from awarding a higher compensation if it is just and reasonable, this Court directs the enhancement of compensation to a sum of Rs.3,47,000/- as observed by the Tribunal, subject to payment of Court fee on the compensation amount over and above Rs.2,50,000/-.

8. The appeal is accordingly allowed in part. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

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