

(2000) 09 AP CK 0058
In the Andhra Pradesh High Court
Case No : AAO No. 919 of 1994

Y. Sivarama Sastri and another

APPELLANT

Vs

Nayeem Khan and others

RESPONDENT

Date of Decision : 08-09-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2001) 1 ACC 379 : (2002) ACJ 324 : (2000) 6 ALD 374 : (2000) 6 ALT 116

Hon'ble Judges : Ghulam Mohammed, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : Mr. R.V. Nagabhushana Rao, for the Appellant; Mr. B. Venkata Rao and Mr. V.V. Prabhakar Rao, for the Respondent

Judgement

Ghulam Mohammed, J.—This appeal is directed against the award of the Motor Accidents Claims Tribunal awarding a sum of Rs.3,85,000/- towards compensation jointly and severally and limiting the liability of the third respondent/ insurance company to Rs.1,50,000/-. The appellants herein are the claimants i.e., father and daughter of the deceased Y. Ramakrishna who met with an unfortunate accident on 7-8-1989 at 8.10 a.m. and died. The respondents filed claim petition u/s 166 of the Motor Vehicles Act claiming a compensation of Rs.10,00,000/-stating that the deceased had a brilliant educational career who was a Research Officer working in the National Institute of Nutrition at Hyderabad and submitted that the deceased was aged 30 years old only on the date of accident and that in the normal course he would have risen to the post of Director of the National Nutrition Institute. The brief facts of the case are as follows:

That on 7-8-1989 the deceased was proceeding on his motor cycle bearing No. AHY 3537 and when he reached near National Police Academy a lorry bearing No. ATT 7095 belonging to the first respondent driven by second respondent driven by second respondent in a rash and negligent manner dashed against the

motorcycle and caused instantaneous death of the deceased.

2. The first respondent filed counter admitting the accident and involvement of the said lorry and stated that the same was insured with the third respondent and attributed negligence on the deceased himself and stated that the driver of the lorry took all the necessary care and precaution while driving the vehicle and that since the deceased had overtaken the lorry and that he himself was responsible for the said accident and that the driver of the lorry tried his best to avoid the accident. It is also stated that he is not liable to pay the compensation and that the compensation claimed is excessive and also disputed the age and earnings of the deceased.

3. The third respondent/insurance company filed counter admitting the accident occurred on 7-8-1989 involving the lorry in question and stated that the accident might have occurred due to the rash and negligent driving of the deceased himself and also admitted that the said lorry was insured with third respondent and stated that the maximum limit of the liability of the third respondent under the policy is Rs.1,50,000/-only. It is also stated that at the time of accident, the driver of the lorry did not possess the valid licence and that the compensation claimed is excessive.

4. On the above pleadings, the Tribunal framed necessary issues. With regard to the first issue as to whether the accident occurred due to the rash and negligent driving of the lorry in question, the claimants adduced both oral and documentary evidence by examining PW1 to PW4 and also marked documents Ex.A1 to A12 and Ex.X1 to X3. There was no evidence adduced on behalf of the first and second respondents. The third respondent/ insurance company examined RW1 and also marked documents Ex.B1 to B5.

5. The Tribunal considered the evidence on record both oral and documentary and rightly believed the version of PW3 who is an independent eye- witness and who narrated the cause of accident and specifically denied the suggestion that the deceased had overtaken the lorry and was responsible for the accident and stated that he witnessed the accident from a distance of 30 feet from the western margin. The Tribunal took credence to the version of PW3 who is an important and independent eye-witness and after considering both oral and documentary evidence has rightly held that the accident was caused due to the rash and negligent driving of the lorry driver.

6. As regards the determination of just compensation under the provisions of the Motor Vehicles Act is concerned, the Tribunal though adopted the criteria of multiplier method but failed to follow the Judgment of the Apex Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and has also failed in not considering the future prospects of the deceased as per the judgment of the Apex Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . In the instant case the deceased was young and bright Research Officer having brilliant

academic career at his disposal and the Tribunal erred in taking the monthly earnings of the deceased as Rs. 1600/- after deducting 1/3rd i.e., Rs.400/- towards personal expenses and determining the compensation.

7. Learned Counsel for appellant vehemently contended that the determination made by the Tribunal is not based on relevant criteria and that the Tribunal failed to consider the future prospects of the deceased and committed an error in limiting the liability of the insurance company as per the terms of the policy at Rs.1,50,000/- without noticing the provisions of the Motor Vehicles Act, 1988 which has removed the hurdle and the compensation has become limitless and as per the judgment of the Supreme Court in Padma Srinivasan Vs. Premier Insurance Company Limited, the liability of the Insurer arises from the date of accident on which day the cause of action accrues. The Apex Court further held as follows:

"The liability must mean liability as determinable under Chapter VIII at the relevant time, that is to say, at the time when the liability arises. Since the liability of the insurer to pay a claim under a motor accident policy arises on the occurrence of the accident and not until the, one must necessarily have regard to the state of the law obtaining at the time of the accident for determining the extent of the insurer's liability under the statutory policy. In this behalf, the governing factor for determining the application of the appropriate law is not the date on which the policy of insurance came into force but the date on which the cause of action accrued for enforcing liability arising under the terms of the policy."

8. Therefore, the award of the Tribunal fixing the liability of the insurance company to an extent of Rs.1,50,000/- is hereby set aside.

9. The deceased at the time of the accident was aged 30 years as per the Secondary School Certificate and was working as Research Officer and drawing a salary in the time scale of Rs.2,000-60-2, 300 EP-75-3,200. As per the evidence of PW2 who is a co-employee of the deceased who stated that the deceased would have got the promotions and would have reached to the level of Deputy Director.

10. In view of the above background and in view of the evidence of PW2 and having regard to the future prospects and advancement in life and career of the deceased as he was at the prime age of 30 years at the time of accident, we are of the opinion that the proper and approximate earning of the deceased shall be fixed at Rs.3,500/- per month and 1/3rd is deducted towards personal expenses and the 2/3rd is earmarked towards monthly contribution to his family which approximately comes to Rs.2,300/- per month and annually it comes to Rs.27,600/-. The Tribunal has taken a right multiplier of 16, applying the same, the loss of dependency is awarded as Rs.4,41,600/- i.e., Rs.27,600 x 16 -4,41,600), apart from this a conventional sum of Rs.15,000/- is hereby awarded towards consortium and a further sum of Rs. 15,000/- is awarded towards loss of

estate. Thus, the award of the Tribunal is hereby modified and the compensation is enhanced from Rs.3,85,000/- to Rs.4,71,600/- (Four lakhs seventy one thousand six hundred only) jointly and severally together with interest @ 12% from the date of petition till the date of realisation. The apportionment made by the Tribunal shall operate.

11. In result, the appeal is allowed. No costs.