(2014) 01 AP CK 0029

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 121 of 2005

Yadagiri Narsaiah APPELLANT

Vs

K. Venkat Ram Reddy RESPONDENT

Date of Decision : 21-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33, 2(11)
Motor Vehicles Act, 1988 — Section 110, 110(a), 110(a)(i), 140, 163-A

Citation : (2014) 01 AP CK 0029

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : M. Rajamalla Reddy, Advocate for the Appellant; Ravi Shankar Jandhyala, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

B. Siva Sankara Rao, J.—The claimants, in the claim petition, filed this appeal having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad, (for short, ''Tribunal'') in M.V.O.P. No. 1321 of 2001 dated 12.10.2004, awarding compensation of Rs. 1,13,092/- (Rupees One lakh thirteen thousand ninety two only) with interest at 9% per annum as against the claim of the claimants 1 and 2, sons of the deceased, of Rs. 5,00,000/-(Rupees Five lakhs only), in the claim petition u/s 166 of the Motor Vehicle Act, 1988 (for short, ''the Act'').

2. Heard Sri M. Rajamalla Reddy, the learned counsel for the appellants and Sri Ravi Shankar Jandhyala, learned standing counsel for the 2nd respondent. The 1st respondent un-served though personal service ordered by this Court and sent to same address returned un-served and no further steps taken. In fact he remained exparte even before the Tribunal and even not impleaded as party to the appeal, appeal is maintainable as per the contention of the appellant by following the Division Bench Judgment of this Court in Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others, . Perused the material on record.

The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3. The contentions in the grounds of appeal by the appellants-claimants who are no other than major sons of deceased Avusula Lakshmi in nutshell are that the Judgment and decree of the Tribunal regarding the quantum of compensation is contrary to law, weight of evidence and probabilities of the case and ought to have awarded Rs. 5,00,000/- as prayed for as the deceased was earning Rs. 5,000/- per month by working as Beedi roller and ought to have applied 15 as multiplier. It is further contended that the Tribunal did not award just compensation towards loss of estate, funereal expenses etc, and prayed to allow the appeal by awarding compensation as prayed for. Whereas learned counsel for the 2nd respondent-insurance company contended that the claimants are not at all depending upon the income of the deceased as they are married sons of the deceased and the deceased herself is depending upon the earnings of the claimants and the Tribunal ought to have awarded compensation under no fault liability instead of awarding compensation by calculating her monthly income by applying multiplier. The learned counsel for the 2nd respondent further contended that the quantum of compensation awarded is excessive and outcome of wrong application of multiplier and wrong taking of the income of the deceased and hence to dismiss the appeal with costs if not to reduce to no fault liability''s sum for want of cross-objections.

4. Now the points that arise for consideration in the appeal are:

1. Whether the compensation awarded by the Tribunal is not just and requires interference by this Court while sitting in appeal against the award and if so with what enhancement to arrive a just compensation and with what rate of interest?

2. To what result?

POINT-1:

5. The fact that the deceased Avusula Laxmi @ Yadagiri Laxmi (mother of claimants 1 and 2) aged about 50 years died in the motor accident dated 26.04.2001, due to rash and negligent driving of the driver of the crime lorry bearing No. AP 9U 2720 while the deceased and others going in an auto bearing No. AP 25T 6421, are proved from the material on record and no way requires interference in the appeal.

6. Now, coming to the main dispute as to from the claimants being major sons of the deceased widow whether entitled only to no fault liability or just compensation as per Section 166 of the Act concerned though it is the contention of the insurer by referring to a judgment of this Court in The Oriental Insurance Co. Ltd. Vs. Athmakuri Rama Rao and Another, that once they are not the dependants being major sons with independent income Section 166 of the Act has no application but for Section 140 of the Act as guidance even the claim made u/s 166 of the Act. In fact, in the entire Act there is no wording of just

compensation as per structured formula either u/s 163-A or u/s 166 of the Act to be entitled is only by the dependants muchless dependants among the legal representatives. The word ''legal representative'' alone used in the Act is itself in fact suffice to negate said contention of the insurer in the absence of showing any settled expressions in this regard to lay foundation to said contention.

7. A claim application filed by legal representatives of the deceased is sustainable as per Section 166(1)(c) of the Act which provides that any person who is legal representative by virtue of succession or through other means known to law can be a legal representative and maintain the claim application and provision does not insist the claimant to be dependent upon the deceased. Same was the guidance to say once the claimant is legal representative it is suffice to grant just compensation in a claim u/s 166 of the Act as expressed by this Court in The United India Insurance Company Limited. Vs. G. Satish Kumar and others, . Another expression of this Court in (2013) ACC 760 held that legal representatives of the deceased can make a claim u/s 166 of the Act though they have some other income or that they are not dependants on the income of the deceased and thus it cannot be said that they cannot make any application u/s 166 of the Act. It however held that the contribution of the deceased may be assessed and dependency be taken also bearing in mind the independent income of the claimants. Here the crux is to decide once he is a legal representative is also considered to be a dependant so far as calculation of the loss of dependency from the death of deceased concerned, irrespective of the claimant(s) legal representative(s) not solely or otherwise partly depending on the deceased. In this regard also the law is well laid down by the Apex Court in saying sons even majors, it cannot be said that they have no longer be regarded as dependants on the deceased in Santosh Devi Vs. National Insurance Company Ltd. and Others, Further, in A.P.S.R.T.C. Vs. B. Krishnaji Rao and another, this Court held under the old M.V. Act 4 of 1939, in the claim petition claimed, u/s 110(a) & (b) of the Act, by major elder brother and sister of the deceased as only legal heirs held; multiplier method has to be adopted even not sole dependants. In other expression of Gujarat High Court in New India Assurance Co. Ltd. Vs. Ashwin Vrajlal Rajgor, Newphew of Late Kantilal D. Rajgor, for the claim petition filed by brother''s son and brother''s wife being only legal heirs in Class-II category, they were held entitled to compensation under multiplier method. In fact the Apex Court way back in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, held that Section 110(a)(i), (b) & (c) provide that an application for compensation may be made by all or any of legal representatives of deceased. The proviso to sub-section (1) of Section 110 provides that where all legal representatives not joined, such application shall be made on behalf of and for the benefit of all the legal representatives. Legal representative has not been defined in the Act but for Section 2(11) C.P.C. to mean ''A'' person who in law represents the estate of the deceased for a person on whom the estate devolves on the death of an individual''. It further observed by the Apex Court at para-12 that:

"we should remember that in an Indian family brothers, sisters and brothers'' children and some times foster children lived together and they are dependant upon the bread winner of the family. When he died in the motor accident, there is no justification to deny them compensation........."

"We express our approval of the decision on Megjibhai Khimji Vira and Another Vs. Chaturbhai Taljabhai and Others, and held that brother of a person who dies in a motor accident is entitled to maintain a claim petition u/s 110(a) of the Act, if he is a legal heir of the deceased."

8. Thus, a combined reading of above propositions crystallizes the law to have a settled expression that merely because the legal representatives of the deceased are the remote legal heirs even in the absence of wife/husband/children/parents or even any of them and in the worst situation all majors like major sons and not dependants on the deceased either solely or in part, it does not mean the compensation to be awarded in such case for the claimants on death of deceased as legal heirs is under no fault liability, but for to say at best to consider the extent of contribution domestic or otherwise in addition to the individual income of the claimants to take the same into consideration as a loss of dependency to award compensation.

9. Therefore, the claimants are entitled to claim compensation for the death of their mother in a motor accident and the claim petition is maintainable to award compensation on multiplier method, however by taking a reasonable amount out of estimated earnings of the deceased towards loss of contribution by deceased to the claimants. For no cross-objections filed by the 2nd respondent-insurer or owner muchless any independent appeal, since there is a bar on the power of the Court even to exercise any power under Order XLI, Rule 33 C.P.C. to reduce from what was awarded by the Tribunal from what is laid down in Ranjana Prakash and Others Vs. Divisional Manager and Another, that in the appeal filed by the parties, in the absence of cross-objections by the opposite party, they have no right and Court also has no power either to reduce or to enhance as the case may be.

10. When coming to the quantum of compensation, as to what is just compensation in the factual matrix of the case concerned, it is apt to state that perfect compensation is hardly possible and money cannot renew a physique or frame that has been battered and shattered, nor relieve from a pain suffered as stated by Lord Morris. In Ward v. James 1965 (1) All.E.R 563, it was observed by Lord Denning that award of damages in personal injury cases is basically a conventional figure derived from experience and from awards in comparable cases. Thus, in a case involving loss of limb or its permanent inability or impairment, it is difficult to say with precise certainty as to what composition would be adequate to sufferer. The reason is that the loss of a human limb or its permanent impairment cannot be measured or converted in terms of money. The object is to mitigate hardship that has been caused to the victim or his or her legal representatives due to sudden demise. Compensation awarded should not

be inadequate and neither be unreasonable, excessive nor deficient. There can be no exact uniform rule in measuring the value of human life or limb or sufferance and the measure of damage cannot be arrived at, by precise mathematical calculation, but amount recoverable depends on facts and circumstances of each case. Upjohn LJ in Charle red House Credit v. Tolly 1963 (2) All.E.R 432 remarked that the assessment of damages has never been an exact science and it is essentially practical. Lord Morris in Parry v. Cleaver 1969 (1) All.E.R 555 observed that to compensate in money for pain and for physical consequences is invariably difficult without some guess work but no other process can be devised than that of making a monitory assessment though it is impossible to equate the money with the human sufferings or personal deprivations. The Apex Court in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, at paragraph No. 12 held that in its very nature whatever a Tribunal or a Court is to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standard. Thus, in most of the cases involving Motor Accidents, by looking at the totality of the circumstances, an inference may have to be drawn and a guess work has to be made even regarding compensation in case of death, for loss of dependent and estate to all claimants; care, guidance, love and affection especially of the minor children, consortium to the spouse, expenditure incurred in transport and funerals etc., and in case of injured from the nature of injuries, pain and sufferance, loss of earnings particularly for any disability and also probable expenditure that has to be incurred from nature of injuries sustained and nature of treatment required.

11. From above legal position and coming to the factual matrix, the age of the deceased was about 50 years as per Ex. A-4, post mortem examination report, and the multiplier adopted by the Tribunal is 7.68. From the Honourable Apex Court''s expression in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the multiplier that is applicable to the person upto 50 years is 13 and above 50 years is 11 and to say 12 is the proper multiplier to adopt in the present case on hand. The earnings of the deceased estimated by the Tribunal at Rs. 1,500/- per month and the same is otherwise not sustainable as in Lata Wadhwa and Others Vs. State of Bihar and Others, the Honourable Apex Court held that even in the case of non-earning member and domestic contribution of a house-wife can be assessed at Rs. 3,000/- per month i.e., Rs. 36,000/- per annum. In the present case on hand, since claimants are not totally dependants in the deceased mother and her income also, the contribution of the deceased to the claimants that is the criterion as detailed supra, the same can be taken at Rs. 2,000/- per month i.e., Rs. 24,000/- per annum and if ? (50%) deducted towards personal expenses of the deceased since only two claimants being major sons it comes to Rs. 12,000/- per annum and after applying multiplier as 12, loss of contribution from deceased as dependency to the claimants comes to Rs. 2,24,000/- apart from the claimants are entitled to

funereal expenses of Rs. 25,000/- and loss of estate minimum of Rs. 5,000/- as per Rajesh and Others Vs. Rajbir Singh and Others, , which comes to Rs. 2,54,000/-. As such, the quantum of compensation awarded by the Tribunal of Rs. 1,13,092/- is a low amount and required to be enhanced to Rs. 2,54,000/-, however by reducing the rate of interest from 9% p.a. to 7.5% p.a. as per the settled expressions in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, and Rajesh (supra). Accordingly point No. 1 is answered.

POINT No. 2

12. In the result, the appeal is allowed in part by enhancing the quantum of compensation from Rs. 1,13,092/- to Rs. 2,54,000/- with 7.5% p.a. interest (by reducing from 9% p.a.) in favour of the claimants, who are equally entitled to apportion the same and the respondents 1 and 2 are jointly and severally liable to pay the compensation. The 2nd respondent is hereby directed to deposit or pay the compensation amount within one month from today, failing which the claimants can execute and recover to the credit of the O.P. before the Tribunal. After deposit or recovery by execution, the claimants are entitled to withdraw the same. There is no order as to costs.

