

(1987) 04 AP CK 0001

Andhra Pradesh High Court

Case No: A.A.O. No. 748 of 1980

G. Nookarathnam and Others

APPELLANT

Vs

United India Fire and General
Insurance Co. and Others

RESPONDENT

Date of Decision: April 24, 1987

Acts Referred:

- Fatal Accidents Act, 1855 - Section 1A
- Motor Vehicles Act, 1939 - Section 110, 110A, 110B, 110C, 110D

Citation: (1988) ACJ 315 : (1989) 65 CompCas 693

Hon'ble Judges: K. Amareswari, J

Bench: Single Bench

Advocate: M.Y.K. Rayudu, for the Appellant; K.G. Kannabiran and K. Harinath, for the Respondent

Judgement

Amareswari, J.

This is an appeal against the order of the Motor Accidents Claims Tribunal, Secunderabad, dated March 31, 1980, in O.P. No. 297 of 1978 awarding a sum of Rs. 10,000 in all towards compensation with interest at the rate of 6% per annum.

2. The deceased, Surya Rao, was aged about 28 years. He was unmarried. He was working as a testing engineer in BHEL, Ramachandrapuram, earning about Rs. 1,050.50 per month. On September 5, 1977, at about 7-30 a.m., he was going in the bus, APZ 6789, belonging to the Andhra Pradesh State Road Transport Corporation to his work place at Ramachandrapuram. On the way, the bus collided with a lorry coming in the opposite direction belonging to the second respondent. In the accident, Surya Rao sustained multiple injuries and died on the spot. His, father, P. Suryanarayana, his five sisters and one brother filed a petition before the Accidents Claims Tribunal claiming a compensation of Rs. 2,10,000 on the ground that the deceased, Surya Rao, was the sole bread-winner of the family. The first respondent

is the insurance company with which the lorry was insured. The second respondent is the owner of the lorry and the third respondent is the Andhra Pradesh State Road Transport Corporation, the owner of the bus.

3. The insurance company filed a counter that they are not liable to pay compensation and in any event their liability is limited to Rs. 50,000. The owner of the lorry remained ex parte.

4. The third respondent, A.P. State Road Transprot Corporation, contended that the bus was going at normal speed at the time of the accident, that the lorry which was coming in the opposite direction at a high speed had swerved to its right and dashed against the bus and thus the accident was entirely due to the rash and negligent driving of the lorry by its driver.

5. On a consideration of the evidence, the Tribunal found that on the date of the accident, the Road Transport Corporation bus was going on the road not intended for the vehicles going towards Ramachandrapuran side, as the road intended for the vehicles going towards Ramachandrapuram was closed for vehicular traffic, that the bus was going at more than ordinary speed, that the lorry was also coming at more than the ordinary speed and both the lorry and the bus are equally negligent. A sum of Rs. 10,000 was awarded as compensation and the same was directed to be paid in two equal halves by respondents Nos. 1 and 2 together one-half and the 3rd respondent one-hall, i.e., Rs. 5,000, to be paid by respondents Nos. 1 and 2 jointly and severally and a sum of Rs. 5,000 by the third respondent. Interest was awarded at the rate of 6% per annum from the date of the petition till the date of realisation.

6. Aggrieved thereby, the insurance company preferred C.M.A. No. 501 of 1980 and the claimants preferred C.M.A. No. 748 of 1980. Unfortunately, these two appeals are not clubbed and C.M.A. No. 501 of 1980 was already disposed of by this court. The appeal preferred by the insurance company was allowed holding that there was no negligence on the part of the lorry driver and that the accident due to the rash and negligent driving of the driver of the bus. It was also held that the amount awarded is not excessive. The result was that the R.T.C. alone was liable for the payment of compensation whatever the quantum be.

7. This appeal is by the claimants. They say that the amount awarded is wholly inadequate. The deceased was aged only 28 years and was earning Rs. 1,000 a month, he was the sole breadwinner and his death resulted in a great loss to the estate. They contend that the amount claimed by them should have been awarded.

8. The A.P.S.R.T.C. filed cross-objections contending that since the father of the deceased died during the pendency of the claim, the petition had abated. Having regard to the circumstances of the case, the amount awarded is not inadequate or unreasonable.

9. The accident occurred on August 5, 1977. The petition for compensation was preferred by 7 persons, petitioner No. 1 is the father, petitioners Nos. 2, 3, 4, 6, and 7 are the sisters and petitioner No. 5 is the brother of the deceased. The father died during the pendency of the petition. Petitioners Nos. 2 to 7 who were already on record were brought on record again as legal representatives of the deceased.

10. Under clause (b) of sub-section (1) of section 110A of the Andhra Pradesh Motor Vehicles Act, an application for compensation may be made by all or any of the legal representatives of the deceased where death has resulted from the accident. The father is undoubtedly a legal representative. But, Mr. Harinath, learned counsel, contended that after the death of the father, the petition does not survive. He invited my attention to section 1A of the Indian Fatal Accidents Act, 1855, which says that any action to recover damages on the death of a person caused by a wrongful act shall be for the benefit of the wife, husband, parent and child and shall be brought by the executor, administrator or representative of the deceased. It is urged that the word "representative" in section 1A does not mean a "legal representative" of the kind contemplated in the Civil Procedure Code, but must have reference to the earlier words in the same section "for the benefit of the wife, husband, parent and child". Since the deceased is an unmarried person and his only parent, the father, died during the pendency of the proceedings, the petition had abated.

11. The Indian Fatal Accidents Act is of the year 1955. Several legislations were passed since then, out of which one legislation is the Motor Vehicles Act. Sections 110 to 110F of the Motor Vehicles Act provide for the adjudication of claims for compensation on behalf of victims of a motor accident and the complete machinery for the adjudication of such claims. u/s 110F, the jurisdiction of the civil courts is specifically ousted and instead, the Claims Tribunal was vested with the power to decide the claims. These provisions have to be read along with the Indian Fatal Accidents Act, 1955. While the provisions of the Fatal Accidents Act relate to general accidents, the provisions of the Motor Vehicles Act pertain to claims arising out of motor accidents. The provisions of both the Acts have to be read harmoniously and in the case of any conflict, the special provisions should prevail. Therefore, we have to go by the words used in section 110 to 100F of the Motor Vehicles Act. It is submitted that sections 110 to 110F do not lay down any new liability and it only provides for the machinery for adjudication of claims for compensation. I do not agree. The provisions of the Fatal Accidents Act do not exclude the provisions of the Motor Vehicles Act. I am, therefore, unable to accept the contention that it is only the Fatal Accidents Act that governs the case and that the relevant provisions of the Motor Vehicles Act have no application.

12. As I said earlier, both the Acts have to be read together harmoniously.

13. The next question for consideration is what the meaning of "legal representative" mentioned in the Motor Vehicles Act. We do not find a definition in

the Motor Vehicles Act. The scope of this expression came up before several courts in India and it was held that it has a very wide meaning and includes all representatives of the deceased.

14. In Mohammed Habibullah and Another Vs. Seethammal, it was held that a married sister of the deceased can bring an action for compensation as a legal representative of the victim.

15. In Vanguard Insurance Co. v. Hanumantha Rao [1975] ACJ 344, the facts were almost identical. The deceased had no wife and children. His mother was alive. She died after having made a claim in regard to her own loss and also loss to the estate of the deceased. On her death, the brother had come on record. It was contended that the brother cannot be said to maintain the action. This court repelled that contention and held that in law, the brother represents the estate of the deceased person. The learned judges referred to Perumal v. Ellusamy Reddiar [1974] ACJ 182 in which it was said that any one who represents the estate of the deceased is entitled to claim compensation towards loss to the estate and the person who represents the estate need not necessarily be the heir of the deceased and the brother and sister, in the absence of the parents, are entitled to claim the loss to the parents of the deceased.

16. In Meqibhai Khimji Vira and Another Vs. Chaturbhai Taljabhai and Others, a claim application filed by the nephews of the deceased was held to be maintainable and that it could not be thrown out on the grounds that the claimants were not the persons named in section IA of the Fatal Accidents Act.

17. Thus, the various decisions referred to above settle the law on the subject, that the legal representatives do not mean only the persons referred to in the Fatal Accidents Act, but every person who represents the estate of the deceased. The next question for consideration is whether the amount awarded is reasonable. The compensation contemplated u/s 110B of the Motor Vehicles Act is wider than under the Fatal Accidents Act, and the courts are to be guided while awarding compensation to the dependants of the deceased by the principle that the compensation assessed must be just. No rigid formula can be laid down. In each and every case, a number of factors, peculiar to the life and circumstances of the family concerned, must be taken into account. This is likely to introduce an element of conjecture. But reasonable conjectures could always be made of course, but not wild speculations.

18. In the present case, the deceased is the sole bread-winner of the family. He was working as a testing engineer and drawing a salary of Rs. 1,000 per month. He left behind his father, five sisters and one brother. The father died during the pendency of the proceedings. Only one sister is married. Had the deceased lived, being the sole earning member and the head of the family after the father, he had the obligation to get the other sisters married and provide good education to the

brother.

19. The dependants are five in number. They have to be maintained at least till they attain majority. The sisters have to be married. The deceased was drawing a salary of Rs. 1,000 a month. Even if he had spent Rs. 500 on himself, he would have spent the balance for the family. On an average, the period of dependence can be fixed at 6 years. At the rate of Rs. 500 per month for 6 years, it comes to Rs. 36,000. In ill, a sum of Rs. 40,000 is a just compensation. The trial court awarded a meagre amount of Rs. 10,000 which is wholly inadequate and unrelated to the circumstances of the case.

20. In the result, the appeal is allowed with costs and the judgment of the lower court is modified and a sum of Rs. 40,000 is awarded towards compensation as against Rs. 10,000 given by the court below to be paid by the third respondent, the A.P. State Road Transport Corporation. The amount shall be apportioned between the claimants equally. Consequently, the cross-objections preferred by the 3rd respondent are dismissed without costs.