Oriental Insurance Co. Ltd. Vs P. Sathyavathamma and Others

Court: Andhra Pradesh High Court

Date of Decision: Nov. 25, 2009

Acts Referred: Fatal Accidents Act, 1855 â€" Section 1A, 4
Motor Vehicles Act, 1939 â€" Section 110B
Motor Vehicles Act, 1988 â€" Section 163A, 166, 170, 173

Citation: (2010) 3 ALT 433

Hon'ble Judges: V.V.S. Rao, J; B.N. Rao Nalla, J

Bench: Division Bench

Advocate: A. Hari Krishnam Raju, in C.M.A. No. 4023 of 2004, for the Appellant; A. Hari Krishnam Raju, in Cross-Objections (SR) No. 49580 of 2005 and J.M. Naidu, for Respondents Nos. 1 to 4, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V.V.S. Rao, J.
Oriental Insurance Company Limited is appellant in this miscellaneous appeal filed u/s 173 of Motor Vehicles Act, 1988

(the Act, for brevity) against the award dated 09-7-2004 in M.V.O.P. No. 20 of 2001 passed by the Court of Motor Accidents Claims Tribunal-

cum-District Judge, Chittoor (hereafter, Tribunal). The appellant obtained necessary permission u/s 170(b) of the Act and filed instant appeal

questioning the award insofar as quantum of compensation awarded by the Tribunal is concerned.

2. P. Jyothi Reddy (since deceased) was bachelor. He is son of first respondent and brother of second respondent. Respondents 3 and 4 are

daughters of second respondent. Jyothi Reddy statedly was cultivating the land belonging to the family. He was also Proprietor of P.J. Jute

Company and Jyothi Granites. On 15-5-2000 at 7.30 A.M. while he was travelling in a car bearing No. AP 03F 990 from Tirupati, lorry bearing

No. AP 07V 3721 insured with appellant dashed against the car resulting in instantaneous death of Jyothi Reddy. The other persons travelling in

the car received injuries. On a complaint given by one of the travellers, K. Ravi, Police registered a case of negligence against the driver of lorry.

After investigation, they filed charge sheet against lorry driver on the file of the Court of III Additional Judicial Magistrate of First Class, Tirupati.

3. The mother, sister and two nieces of Jyothi Reddy instituted petition claiming Rs. 25,00,000/- as compensation for the death of Jyothi Reddy.

They alleged that Jyothi Reddy aged 30 years was raising mango and coconut saplings in the land and selling them in the market and was getting an

amount of Rs. 5,00,000/-. He was also cultivating paddy and sugarcane and was getting a sum of Rs. 1,00,000/-. He was also getting Rs.

2,00,000/- from coconut trees and had an income of Rs. 10,00,000/-. They also alleged that sister of Jyothi Reddy and her daughters were

dependents on him. The owners of the two vehicles did not contest the matter. The appellant alone opposed the claim denying negligence on the

part of driver of lorry. It was also pleaded that sister of the deceased and her two daughters are not dependents and that the income of Jyothi

Reddy at Rs. 10,00,000/- is excessive. The Tribunal framed appropriate issues. The mother of deceased gave evidence as P.W.1. The eye

witness to the accident, K. Ravi, gave evidence as P.W.2, to corroborate the negligence on the part of the lorry driver. P.Ws.3 to 5 were

examined to prove the income of deceased. Exs.A-1 to A-18 were also marked. The insurer did not adduce oral or documentary evidence.

4. Placing reliance on the evidence of P.W.2 and also taking into consideration absence of any evidence on behalf of appellant, learned Tribunal

recorded finding that driver of the car was not negligent and that the driver of lorry was negligent in causing the accident. Finding that sister of

deceased and her daughters are not dependents on deceased, the Tribunal held that they are not entitled to claim compensation. A sum of Rs.

11,20,000/- was directed to be paid to mother jointly and severally by the owner and insurer of lorry with interest at 9% per annum. In

determining the said compensation, learned Tribunal took into consideration age of the mother and loss of supervisory charges on agriculture at Rs.

50,000/- and on industry at Rs. 1,00,000/- An amount of Rs. 15,000/- towards loss of estate and a sum of Rs. 2,500/- each towards

transportation and funeral expenses were also awarded.

5. In this appeal, learned Counsel for insurance company submits that the Tribunal ought to have deducted half of the income towards personal

expenses of deceased and that the amount determined towards agricultural and supervisory charges is erroneous. He also contends that in the

absence of any account books and Income Tax returns, it is not safe to determine supervisory loss on industry at Rs. 1,00,000/-. He placed

reliance on two decisions of this Court rendered by one of us (Hob''ble Sri Justice V.V.S. Rao) in Sannala Bhaskar Reddy v. M. Sreenivasulu

2009 (4) ALT 223 : 2009 (2) A.W.R. 238 (A.P.) and Seshapu Ramulamma Vs. Doppalapudi Raju and Others, . He also placed reliance on

latest judgment of Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Learned Counsel for

claimants/cross-objectors made the following submissions. While determining the loss of supervisory charges, the Tribunal must have taken into

consideration the fact that as owner deceased would evince more interest and spend entire time on agriculture. He relies on D. Vinoda v. B. Basiva

Raju 1988 ACJ 1072 (A.P.) : 1988 (2) ALT 46 and G. Lakshmamma and Others Vs. Navatha Road Transport and Another, in support of this

contention. He nextly contends that when the deceased was an agriculturist and the basis for determining multiplicand is loss of supervisory

charges, deduction is not permissible. He relies on decision of Delhi High Court in U.P. State Road Transport Corporation v. Anita Verma 2007

ACJ 962 (Delhi). Alternatively he submits that the sister of the deceased and her two daughters were dependents upon the deceased, and

therefore, even if they are not entitled for any compensation, still taking into consideration their dependency 50% of the amount cannot be

deducted and 1/3rd amount alone should be deducted. He relies on the decision of Supreme Court in Sarla Verma (3 supra).

6. As the controversy centres round multiplicand or loss of income to the family on account of death of Jyothi Reddy and also regarding

dependency of the claimants, we will consider these questions one after the other. Before doing so, we need to reiterate the law regarding legal

representatives who would be entitled to claim compensation for the death of a person in motor accident and who can maintain claim petition.

Who are dependents

7. In A.P.S.R.T.C. v. Shafiya Khatoon AIR 1985 ACJ 212 (D.B.) (A.P.), a Division Bench of this Court elaborately considered this aspect of the

matter. The Court addressed a question whether the compensation under the Act can be shared by the dependents not enumerated under the Fatal

Accidents Act, 1855. The question arose in the context of Section 110-B of Motor Vehicles Act, 1939, whether a married sister of the deceased

is dependent of the deceased was also considered. It was held.

In our view the provisions u/s 110-B of the Motor Vehicles Act, 1939 not only empower the Tribunal to make an award which is "just" but also

empower the said Tribunal to specify the person or persons to whom the compensation shall be paid, thereby permitting apportionment of

compensation payable under the Fatal Accidents Act, 1855 to persons other than those enumerated in the Fatal Accidents Act, 1855. In our view

all the legal representatives of the deceased, according to the personal law applicable to the deceased, will be entitled to apportionment of the

dependency as per their needs and according to their age and apportionment is not limited to the class of persons enumerated u/s 1-A of the Fatal

Accidents Act read with Section 4 thereof.... The further question is as to who are entitled to receive these sums. The dependency, according to

the liberal view accepted by us, is to go to all the legal heirs of the deceased who died intestate. The heirs are the mother and sisters, married and

unmarried. But the married sisters, not being any longer dependent get nothing. The dependency goes to the mother and the unmarried sisters.

(emphasis supplied)

8. In Megjibhai Khimji Vira and Another Vs. Chaturbhai Taljabhai and Others, . Gujarat High Court held that all the heirs and legal representatives

of the deceased could maintain a claim petition under Motor Vehicles Act. In Gujarat State Road Transport Corporation, Ahmedabad Vs.

Ramanbhai Prabhatbhai and Another, , Supreme Court approved Megjibhai Khimji Vira (8 supra) and held that, ""the brother of the person who

dies in a motor accident is entitled to maintain a petition under the Act if he is legal representative of the deceased."" Therefore, so as to maintain a

petition for compensation either u/s 163-A or 166 of the Act, a person must besides showing that he/she is legal representative of the deceased,

must also demonstrate that he/she is dependent on the deceased. In such a case, mere fact that the claimants used to live under the same roof with

the deceased by itself would not be sufficient. In addition, it must be proved that such persons were entirely dependents for their livelihood on the

deceased. In Sarla Verma (3 supra), Supreme Court laid down that, ""in the absence of evidence to the contrary, brothers and sisters will not be

considered as dependents because they will either be independent and earning or married or be dependent on the father."" In this case, claimants 2

to 4/cross objectors contend that they are dependents on the deceased, and therefore, they cannot be denied compensation. The Court has

perused the evidence. The mother of the deceased (first claimant) gave evidence as P.W.1. She deposed in the cross-examination that claimants 2

to 4 are residing with them as the husband of second claimant is physically handicapped and he cannot speak properly. In the cross-examination, it

was suggested to her that they are not dependent on the deceased. In spite of the same, no independent evidence was adduced to show that they

are dependents on the deceased. Therefore, it is not safe to infer that claimants 2 to 4 were dependents on Jyothi Reddy. Secondly as held by this

Court in Shafiya Khatoon (7 supra), a married sister or her daughters cannot be considered as dependents even though a married sister may file

petition as a legal representative. Thus a married sister would not be entitled to any compensation.

Loss of Income

9. There is no dispute that when the deceased is an agriculturist owning agricultural land, the value of supervisory services have to be estimated and

taken as basis for determining the loss of income. In Vinoda (4 supra), Hon''ble Justice M. Jagannadha Rao (as His lordship then was) after

referring to the decisions of High Courts of Allahabad, Gujarat, Karnataka, Madhya Pradesh and Rajasthan, summarized two principles as below.

(i) In the case of death of an agriculturist owning agricultural land, the value of the ''supervisory'' services of the deceased have to be first estimated.

This will not be merely equivalent to the value of the services of a farm-servant or a manager of the property employed for that purpose. It will be

more than that because an owner-manager takes extra care in increasing the income year by year and also in increasing the value of the property.

After thus estimating the ''special'' value of the supervisory services of an ''owner-manager'', a deduction is to be made in respect of the money the

deceased would have spent for himself out of such sum and then the annual contribution to the family is to be arrived at. Then an actuarial multiplier

suitable to the age of the deceased has to be applied from the Actuarial Multiplier Table arrived at in Bhagwandas Vs. Mohd. Arif, V. To the said

sum may be added such sums towards loss of consortium and compensation for loss of expectation of life and pain and suffering as decided in

Yerra Varalakshmi v. M. Nageswara Rao 1988 ALT 337 : 1988 ACJ 354 (AP).

(ii) It is not permissible to say that no amount need be awarded towards the loss to the dependency merely because the corpus of the agricultural

land is left intact for the dependants. When in case of death of non-cultivators who have other properties the properties remain intact and still

damages are awarded, there is no reason why on death of cultivator who have agricultural land, a negative attitude should be taken. The general

practice of making automatic deduction for the value of property inherited has fallen into desuetude. The value of the accelerated receipt of

property cannot according to the Privy Council be treated as a total or partial equivalent of the loss to the dependency inasmuch as the said

acceleration has to be set off against the loss of saving of the deceased to the family. At the extreme, it is equally not permissible to capitalize the

income from the land by a number of years'' purchase.

10. In State of Haryana and Another Vs. Jasbir Kaur and Others, , Supreme Court laid down thus.

The land possessed by the deceased still remains with the claimants as his legal heirs. There is however a possibility that the claimants may be

required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases

where agricultural income is the source. Attendant circumstances have to be considered.

11. Learned Tribunal assessed the loss of supervisory charges on agriculture at Rs. 50,000/-. To rebut such conclusion, Ex.A-15 and oral

evidence of P.Ws.3 and 5 was relied on. In addition to this, we have also perused the evidence of P.Ws.3 and 5. From this, it can be inferred that

Jyothi Reddy was cultivating the land and he was producing mango and coconut saplings. By the very nature of work involved in this, more

attention is required and if only a supervisory or farm servant had been engaged at relevant time, it would certainly be not less than Rs. 50,000/-.

Therefore, we do not find any strong reason to vary the loss of supervisory charges on agriculture due to demise of Jyothi Reddy.

12. There is evidence on record to show that Jyothi Reddy was proprietor of P.J.R. Jute Company. He had also registered Jyothi Granites and he

was a local leader. Ex.A-8 was produced to show that profit of P.J.R. Jute Company would be Rs. 1,64,340/-. It is no doubt true that it is a

projection of profit and loss for one month. The same does not include notional salary of proprietor. The staff salary including provident fund is

shown as Rs. 2,48,000/- per annum. Therefore, fixing the loss of Rs. 1,00,000/- as supervisory charges from the industry is not excessive. The

Tribunal having arrived at only loss of income at Rs. 1,50,000/- (loss of supervisory charges on agricultures and industry), deducted 1/3rd towards

personal expenses of deceased. The deduction part of the determination is a contentious issue before us - the appellant asking 50% deduction and

claimants asking for no deduction or 1/3rd deduction.

13. Whether there should not be any deduction when the loss of services/supervisory charges is the basis for determining multiplicand. In Anita

Venna (6 supra), learned single Judge of Delhi High Court was considering loss of dependency due to death of housewife. Though evidence was

let in to show that deceased was earning money as the expert in making kundan jewellery, the Tribunal as well as High Court rejected such

contention. The High Court then determined loss of dependency due to death of the housewife taking into consideration the contribution of

deceased to the family in monetary terms fixed at Rs. 3,000/- per month. The question was whether there should be further deduction of 50% from

the notional monetary contribution. In that connection Delhi High Court observed.

...In view of decision of the Supreme Court that even a housewife contributes to the family, learned Tribunal has treated that contribution of the

deceased to the family could be taken at Rs. 3,000/- per month. Deducting 50% as the personal spending of he deceased, compensation has been

awarded by treating the loss to the family at Rs. 18,000/- per annum. Multiplier adopted is 17. Compensation worked out is Rs. 3,06,000/-, Rs.

5,000/- towards funeral charges and Rs. 20,000/- for pain and suffering of the family on account of the untimely death of the deceased have been

awarded.... I do not find any worthwhile objection raised as to how the award pertaining to the death of Renuka Verma suffers from an infirmity as

projected by the appellant.... As noted above, cross objection N. 254/2006 has been preferred in the present appeal.... The cross objections are

predicated on the ground that the income of the deceased ought to have been determined in the context of minimum wages.... I agree with the

submission made by learned Counsel for the respondents for the reason contribution of the housewife, quantified in material terms is a notional

income, which goes to the family. Question of appropriating one-third or one-half as the personal expenses of the deceased housewife does not

arise. The contribution of the housewife to the family has to be allowed in toto to the family.

14. The principle laid down by Delhi High Court as above would not however be applicable to the case of determination of loss of dependency

based on loss of agricultural supervisory charges. The notional income of a deceased housewife would certainly be different from the notional

supervisory charges on account of a death of agriculturist. Assuming that deceased agriculturist was working as supervisor of another agriculturist,

certainly some amount has to be deducted towards personal expenses as held by Supreme Court in General Manager, Kerala State Road

Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and Sarla Verma (3 supra), but in our opinion, the same cannot be

true - as rightly held by Delhi High Court; in the case of a housewife. The work of housewife as the home-maker can never be substituted nor

housewife can be asked to work as home maker of another family. There is fundamental difference in determining the notional monetary loss on

account of death of housewife and that of an agriculturist. Indeed Delhi High Court also categorically laid down that, ""the contribution of housewife

to the family has to be allowed in toto to the family."" The same principle would not apply to a case of agriculturist while determining loss of

supervisory charges.

15. We shall now take up question of deducting the amount towards personal expenses. In Sarla Verma (3 supra), Supreme Court considered the

question of deduction for personal and living expenses. It is laid down therein as follows.

Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok

Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the

view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd)

where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-

fifth (1/5th) where the number of dependant family members exceed six. Where the deceased was a bachelor and the claimants are the parents, the

deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed

that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which

event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to

have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of

evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or

married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a

dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However,

where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large

number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family

will be taken as two-third.

16. We have already taken a view supra that respondents 2 to 4 herein, claimants 2 to 4 before the Tribunal, cannot be considered as dependents.

Therefore, Jyothi Reddy being a bachelor applying the dicta in Sarla Verma (3 supra), we have to deduct 50% as personal and living expenses.

We are not persuaded with the vehement plea of learned Counsel for claimants that no deduction should be made and if not, 1/3rd only should be

made. We hold that as Jyothi Reddy died as bachelor and his mother alone was dependent on him, and therefore, 50% of income has to be

deducted towards living and personal expenses. The age of first respondent (mother) is admittedly 55 years and as per the multiplier indicated in

Sarla Verma (3 supra), appropriate multiplier would be 11. Therefore, applying the same first respondent would be entitled to (50% of Rs.

1,50,000/- : Rs. 75,000 x 11) Rs. 8,25,000/-. In addition to this amount an amount of Rs. 15,000/- towards loss of estate and Rs. 2,500/- each

towards transportation charges and funeral expenses has to be awarded. Thus in all first respondent would be entitled to Rs. 8,45,000/-. We

accordingly modify the award.

17. In the result, for the above reasons, the appeal filed by the insurance company is partly allowed as indicated above. The cross-objections are

dismissed. There shall be no order as to costs.