M. Narasimhulu Vs B. Jana Reddy and Another

M.A.C.M.A. No. 110 of 2005

Court: Andhra Pradesh High Court

Date of Decision: Oct. 31, 2013

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

Bench: Single Bench

Advocate: A. Jayasankara Reddy, for the Appellant; T. Ramulu for Respondent No. 2-United India Insurance Company Limited, for the Respondent

Final Decision: Partly Allowed

Judgement

Dr. B. Siva Sankara Rao, J.
The injured-claimant filed this appeal, having been aggrieved by the Order/Award of the learned Chairman of

the Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Kurnool (for short, "Tribunal") in M.V.O.P. No. 848 of 2002 dated

11.03.2004, awarding compensation of Rs. 23,232/- as against the claim of Rs. 1,50,000/- (Rupees one lakh fifty thousand only), for

enhancement of compensation as prayed for in the claim petition u/s 166 of the Motor Vehicle Act, 1988 (for short, "the Act"). Heard Sri A.

Jayasankara Reddy, the learned counsel for the appellant and Sri T. Ramulu, learned standing counsel for the 2nd respondent-National Insurance

Company Limited. Service of notice was dispensed with against the 1st respondent-owner of the crime vehicle. In this regard, in Meka Chakra

Rao Vs. Yelubandi Babu Rao @ Reddemma and others, , the Division Bench of this Court at paragraph No. 12 held that statutory liability of the

insurance company, in the absence of the owner of the crime vehicle in the appeal filed by the claimants, can be decided and maintainable as held

in The Branch Manager, The New India Assurance Co. Ltd. Vs. Harijana Babakka and Others, for fixing statutory liability, the presence of the

owner at the appellate stage is not necessary. The same was also quoted with approval in G. Aravind Kumar Rao Vs. Md. Sadat Ali and United

India Insurance Co Ltd. . Thus, the contention that the appeal is not maintainable without impleading owner of the vehicle as co-respondent against

the insurer of the vehicle is not sustainable thereby it can be taken up for hearing. The parties hereinafter are referred to as arrayed before the

Tribunal for the sake of convenience in the appeal.

2. The contentions in the grounds of appeal in nutshell are that the award of the Tribunal is contrary to law, weight of evidence and probabilities of

the case, that the Tribunal erred in arriving a wrong conclusion on the quantum of compensation and awarded a very meager amount instead of

awarding as claimed and prayed for from nature of the injuries proved sustained, pain and sufferance there from, treatment undergone and amount

incurred for the same and hence to allow the appeal by enhancing and awarding full compensation as prayed for.

3. 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:

4. The facts of the case as proved before the Tribunal and not in dispute in this appeal are that, on 23.06.2002 due to the rash and negligent

driving of the driver of the crime vehicle (Tractor bearing No. AP 21 T 0726) belongs to the 1st respondent insured with the 2nd respondent

covered by Ex. B.1 policy, same dashed against the tractor bearing No. AP 21 T 5356 that was being driven by the claimant by name Sri M.

Narasimhulu, aged about 40 years, resident of Kallur village and Mandal and as a result, the claimant sustained two grievous fracture injuries (as

per Ex. A.3 medical certificate and Ex. A.5 discharge sheet), which occurrence is covered by Ex. A.1 First Information Report in Cr. No. 74 of

2002 u/s 338 IPC, Ex. A.2 charge sheet and Ex. A.4 conviction judgment. The Tribunal from the evidence of P.W. 1-claimant and P.W. 2-Dr. G.

Dhanunjaya with reference to Ex. P.3 and P.5 medical certificate and discharge sheet, for said bilateral colles" fracture and fracture of right radius

and ulna come to the conclusion of P.W. 1 got permanent disability of 10% and not 25% and by taking his earnings at Rs. 1,500/- per month and

applied the multiplier 10.45 arrived the amount of Rs. 18,810/- and for medical expenses and treatment from Ex. A6 bills of Rs. 1572/- in all

awarded Rs. 23,232/- against respondent Nos. 1 and 2 jointly and severally.

5. It is the contention of the learned counsel for the claimant in support of the grounds of the appeal that though the permanent disability taken at

10% is not much in dispute, the compensation awarded is unjust, unreasonable and the Tribunal is erred in awarding such a meager amount though

it was supposed to award just compensation by applying correct multiplier 14 and by taking consideration of the earnings at a minimum of Rs.

3,000/- with increase there from of future earnings.

6. Before coming to decide, what is just compensation in the factual matrix of the case, 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 LORD v. in 555 All.E.R (1) 1969 Cleaver, Parry Morris>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, with SLP (Civil) 4586 of 1989 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.

7. From the above legal position, coming to the factual matrix, as the fractures sustained by P.W. 1 and the 10% disability of permanent nature

caused there from is proved and taken note of by the Tribunal, but for the appeal claim limited to the extent not correctly taken the multiplicand

and multiplier, this Court there from holds that the income of the claimant can reasonably be arrived at Rs. 3,000/- p.m., with 30% increase

thereon towards future prospects comes to Rs. 3,900/- p.m. and by adopting multiplier 14 as laid down in the latest expression of the Apex Court

in Rajesh and Others Vs. Rajbir Singh and Others, at paragraph No. 11 referring to the earlier expression in Smt. Sarla Verma and Others Vs.

Delhi Transport Corporation and Another,

8. Having regard to the above, the just compensation which the claimant is entitled comes to 10% of Rs. 3900/- = Rs. 390 per month x 12 = Rs.

4680 x 14 = Rs. 65,520/-, for pain and sufferance Rs. 5000/-, for loss of earnings during treatment and for attendant charges and for transport

charges to hospital Rs. 5000/-, and for medical expenses and treatment of Rs. 4,480/- = Rs. 80,000/- to award. The interest at 9% per annum

awarded by the Tribunal even not in dispute, from the settled proposition of law in Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya

and Others, Sarla Verma"s case (cited supra) and from the latest expression of the Apex Court in Rajesh"s case (cited supra), interest is awarded

at 7 1/2% per annum by modifying and reducing the rate of interest from 9% per annum awarded by the Tribunal. Accordingly, Point-1 for

consideration is answered.

POINT -2:

In the result, the appeal is partly allowed by modifying the Award of the Tribunal on quantum of compensation by enhancing the same from Rs.

23,232/- to Rs. 80,000/- (Rupees eighty thousand only) with interest at 7 1/2% per annum from date of the claim petition till realization/deposit

with notice. The Respondent Nos. 1 and 2, who are jointly and severally liable to pay the compensation, are directed to deposit within one month

said amount with interest from the date of petition, failing which the claimant can execute and recover. On such deposit or execution and recovery,

the claimant is permitted to withdraw the same. There is no order as to costs in the appeal.