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Andhra Pradesh High Court

Case No: Appeal Against Order No. 918 of 1988 and Cross-objections

K. Ramalingam		APPELLANT
	Vs	
Gummalla Kalavati and Others		RESPONDENT

Date of Decision: Sept. 3, 1996

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110B, 110CC, 94, 95, 96

Citation: (1997) 1 ALT 707

Hon'ble Judges: B.K. Somasekhara, J

Bench: Single Bench

Advocate: Y. Rama Rao, for the Appellant; T.S. Anand, for Respondent Nos. 1 and 2 and K. Mangachary, S.C. for Insurance Company, R-4, for the Respondent

Judgement

B.K. Somasekhara, J.
Within the gamut of the controversies in this case, the questions involved for determination are:

1. Whether the liability of the 3rd respondent-Insurance Company is absolved due to the vehicle involved in the accident belonging to the appellant-1st respondent was entrusted to a mechanic or repairer holding no driving licence resulting in the motor vehicle accident due to his negligence?

2. (a) Whether the amount of compensation awarded by the Tribunal is inadequate?

(b) If so to what extent?

3. (a) Whether the award of the Tribunal deserves to be set aside, modified or altered?

(b) If so, to what extent?

2. This appeal and the Cross-objections are the result of the award passed by the Motor Accidents Claims Tribunal, Krishna at Machilipatnam in O.P. No. 149 of 1982

dated 2-6-1984 whereby the claim of the respondents 1 and 2 in this appeal for a sum of Rs. 75,000.00 was conceded only to the extent of Rs. 36,500/- putting the liability to satisfy the award only as against the appellant/owner of the vehicle and whereby the 3rd respondent insurance company was absolved of the liability to satisfy the award.

3. The admitted and proved facts briefly stated are these:- The deceased G. Rangaiah is the husband of claimant'' No. 1 and the father of claimant No. 2. He was working as a cleaner in the lorry bearing No. AAK 8706. The vehicle was left for repairs in the shop of one Devala Singh in Autonagar, Vijayawada. While the lorry was being driven by the mechanic Satluri Venkateswara Rao, the accident occurred whereby the rear portion of the bus dashed against the deceased who sustained fatal injuries and died. The claim was resisted by the contesting respondents on various grounds. The allegation of negligence against the driver was challenged, the material particulars for claim were denied and the liability of the insurance company was challenged on the ground that the vehicle was being driven by a person holding no driving licence whereby the owner of the vehicle had violated the terms of the insurance policy. After an enquiry the Tribunal held the accident as due to the rash and negligent driving of the vehicle by its driver at the relevant time, assessed the compensation at Rs. 36,500/- as a whole following a ruling of this Court in P. Somarajyam v. APSRTC 1984 ACJ 18 : 1983 (1) ALT 21.

4. Thus, aggrieved by the award, both the owner of the vehicle and the claimants have come up with this Appeal and Cross Objections.

5. The first question being the liability of the insurance company to pay the compensation as per the contention of Mr. Rama Rao, learned Advocate for the appellant, this Court is of the considered opinion that the facts and circumstances of this case are totally covered by the two authoritative pronouncements of the Supreme Court in Guru Govekar Vs. Miss Filomena F. Lobo and Others, and Sohan Lal Passi v. P. Seshi Reddy 1996 (5) SC 603 and in view of the decision of this Court in Narasimha Rao v. Ghanshyam Das Tapadia 1986 (1) ALT 192 : 1986 ACJ 850 approved in Guru Govekar Vs. Miss Filomena F. Lobo and Others, . From the evidence and the findings it is clear that at the time of the accident the appellant/owner of the vehicle had entrusted it to a mechanic for repairs whose worker drove the vehicle and caused the accident due to negligence. The finding is that the driver who caused the accident had no driving licence. The question for determination before the Supreme Court in Guru Govekar''s case was whether the insured (sic. insurer) who had issued the policy insuring any person against any liability which may be incurred by him in respect of death or bodily injury to any person or damaging any property of a third party except by or arising out of the motor vehicle in a public place is liable to pay compensation to such third party or his or her legal representatives as the case may be when the liability arises when the motor vehicle is in the custody of a repairer. After an elaborate dealing of the matter with the aid of the provisions Sections 94,

95 and 96 of the Motor Vehicles Act 1939 and with certain pronouncements including the decision of our own High Court (4 supra), the Supreme Court answered the question in the affirmative as follows:-

".....we are of the view that the insurer is liable to pay the compensation found to be due to the claimant as a consequence of the injuries suffered by her in a public place on account of the car colliding with her on account of the negligence of the mechanic who had been engaged by the repairer who had undertaken to repair the vehicle by virtue of the provisions contained in Section 94 of the Act which provides that no person shall use except as a passenger or cause to allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Ch. VIII of the Act."

Similar view has been taken in Sohan Lal Pasi''s case, 1996 (5) Supreme 603 with further elaboration of the law that unless it is established on the materials on record that it was the insured who had wilfully violated the terms of the policy by allowing a person not duly licensed to drive the vehicle when the accident took place, the insured (sic. insurer) shall be deemed to be a Judgment-Debtor in respect of the liability under Sub-clause (sic. Sub-section) (1) of Section 96 of the Act. With these settled principles of law, the 3rd respondent insurance company could not have avoided the liability to pay the compensation to the claimants in this case.

6. Mr. Mangachary, the learned Standing Counsel for the 3rd respondent insurance company with all sincerity and efforts tried to distinguish the two pronouncements of the Supreme Court with the facts and circumstances of this case. According to him there is a clear stipulation in the policy that if the owner of the vehicle violates any of the terms of the policy, the insurance company is not liable and since there is material to show that the vehicle was entrusted to a repairer or a mechanic holding no driving licence regarding which the owner did not enter the witness box to say to the contrary, there cannot be any liability on the part of the insurance company to pay the compensation under the award. This Court is unable.to accept such a contention for two reasons. In the first place, there is no evidence on record, either available or produced by the insurance company, to prove a stipulation that the owner of the vehicle was obliged to entrust the vehicle for repairs only to a garage or mechanic after verifying himself that it or he possesses the valid driving licence and secondly the law is not such from the provisions supra and also the rulings of the Supreme Court as above. The moment it is established that the vehicle in question entrusted to a repairer or mechanic involved in the accident due to the rash and negligent driving of either the mechanic himself or its repairer, as long as the vehicle is insured with the insurance company by the owner of the vehicle, the liability of the insurance company cannot be avoided. The Tribunal has not examined these true implications of law and has hastily come to the conclusion that just because the vehicle involved in the accident was driven by the mechanic or

repairer having no driving licence, the liability cannot be imposed on the insurance company. Such a finding based on improper interpretation of law deserves to be set aside and requires to be modified accordingly.

7. Now coming to the adequacy of the compensation awarded, Mr. Anand, learned Counsel for the claimants has contended that even from the very materials on record, the contribution of the deceased to the family could not have been less than Rs. 200/- to Rs. 300/- per month and with a proper multiplier the compensation ought to have been more than Rs. 50,000/- if not the amount claimed in the petition. There appears to be all the force in such a contention. The Tribunal did not apply the settled law in regard to assessment of compensation and simply depended upon a pronouncement of this Court cited in (1) supra fixing certain compensation amount which must have been depending upon the facts and circumstances of that case. As those facts and circumstances are not at all referred to or discussed by the learned Member of the Tribunal, this Court is not in a position to examine the correctness or propriety of the said decision. The method of assessment of compensation in a fatal accident case applying definite principles has been confirmed by the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and UPSRTC v. Trilok Chandra and Ors. 1996 (4) SC 479 : 1996 (2) ALT 36. The multiplier method is accepted to be the scientific and proper method in a fatal accident case, wherein the age of the deceased, the age of the claimants, the income and the contribution of the deceased to the family to arrive at the multiplicand to be multiplied with a suitable multiplier to provide the loss of dependency to the claimants added with conventional sum towards loss of expectation of life, loss of consortium and some incidental expenses for funeral etc., were given. The date of the accident being 25-11-1981, it is governed by the Motor Vehicles Act of 1939 whereby the maximum multiplier to be applied is 16. Although the age of the deceased is mentioned as 30 years in the claim petition, his wife as P.W.I has stated that his age was 30 to 35 years. The wife must be knowing the correct age of the deceased. Otherwise, it would not have gone beyond 30 years. Therefore, taking 35 years as the age of the deceased at the time of the accident and the death and adopting the multiplier of 13 for his age, as per settled law the contribution to the family will decide the multiplicand and loss of dependency as a whole. It is in evidence that the deceased as a cleaner earning Rs. 150/- per month as salary and some batta of Rs. 5/- to Rs. 10/- per day. The Tribunal unjustifiably did not take the batta into consideration with mere observation that such an income cannot be taken into consideration. For no reasons the income is excluded from the contribution to the family.

8. It is well known or from a legal surmise or conjuncture or judicial notice that a person who is working as a cleaner with the driver in the vehicle for the benefit of the employer should clean and maintain the lorry under the instructions. The lorry being normally a transport or goods vehicle cannot be expected to remain in a place or confine to the local area unless there is evidence to believe that. It can be

judicially noticed that such vehicles move from place to place, region to region and sometimes beyond the State borders also depending upon the nature of the transport involved. The persons who are employed in such transports or the vehicles are to be out of their head quarters and they must maintain themselves by spending some extra amount for their food, shelter and incidental expenses. Rs. 5/- or Rs. 10/- per day is too small and conservative in view of the inflationary trend and the demand by the workers to meet their requirements by the employers. Even the minimum income of the deceased in such a situation as can be judicially noticed could not be less than Rs. 400/- to Rs. 450/- per month. As already pointed out since such persons are to spend some amount towards their personal expenses either the entire batta or part of it shall be deducted out of the said income and that will bring down the income to Rs. 300/- per month or Rs. 3600/-per annum. With that multiplicand and the multiplier of 13 the loss of dependency should be Rs. 46,800/-. Even adding a conventional sum of Rs. 5000/- towards loss of expectation of life as was being done for such accidents, Rs. 5000/- towards loss of consortium to the wife of the deceased and Rs. 3000/- towards incidental expenses, the amount of compensation ought to have been Rs. 59,800/- or to round it off Rs. 60,000/-. For no adequate reasons or justification, the Tribunal fixed the compensation arbitrarily at Rs. 36,500/- which cannot be accepted as correct. It is stated any number of times that the compensation should be not only adequate and reasonable but should not be scanty and at the same time should not be again some venture. Balancing between them, the sum so arrived as above appears to be the reasonable to be paid to the claimants who suffered the death of the sole breadwinner in the family, a cleaner. The award thus deserves to be interfered with, modified and altered to bring out all the legal consequences for implementation as above against all the respondents.

9. Mr. Anand, learned Counsel for the claimants has contended that the interest awarded at 6% is totally against the settled law in various pronouncements upto the present case starting from Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others, Interest to be awarded is within the discretion of the Tribunal u/s 110-CC of the Motor Vehicles Act 1939. It has been emphasised in Geetha''s case ILR 1987 Kar. 142 and Jagadish''s Case ILR 1990 Kar. 4384. However the discretion to be exercised is said to be judicial depending upon the facts and circumstances of each case, which does not fix neither the minimum interest nor the maximum interest. That is how in Basavaraj v.Shekar 1987 ACJ 1022 interest at 9% was awarded. The Supreme Court in Rukmini Devi v. Om Prakash 1991 ACJ 3 awarded 15% interest per annum. It can be judicially noticed that the precedents are consistently awarding atleast 12% interest per annum and the Tribunals shall be bound by the law so declared. The deceased was the sole bread earning member in the family. The vitims are the widow and the minor son. They are kept out of the legitimate compensation over years. As has been settled by the Supreme Court in the above precedents the amount of compensation should be kept even by

depositing them in any nationalised banks or financial corporations so that the claimants will be benefitted from substantial interest ranging from 9% to 10% which may go upto even 20%. If the legitimate amount of the claimants had been deposited in one of the methods available in law, they would have got substantial rate of interest which the Court or the Tribunal cannot deprive them. In such a situation although Mr. Anand is not that tall in claiming interest at 15% per annum, there is no justification to allow interest to remain at 6% per annum and it should be escalated to 12% p.a.

10. In the result, both the Appeal and Cross Objections are allowed. The award of the Tribunal is set aside and modified to the effect that the claimants shall be entitled to recover a sum of Rs. 60,000/- as compensation from the respondents with interest at 12% p.a. from the date of petition till the date of payment. The liability of the respondents shall be joint and several. If any amount is already deposited or paid shall be given deduction ultimately. There is also no reason to exempt the respondents from paying the costs to the claimants throughout.