
(2007) 3 ALD 141 : (2007) 1 APLJ 148

Andhra Pradesh High Court

Case No: Civil Miscellaneous Appeal No. 2378 of 2000

Bhagwandas Tiwari
and Another

APPELLANT

Vs

Narsimha Reddy and
The National Insurance
Company Ltd.,
Regional Manager

RESPONDENT

Date of Decision: Dec. 1, 2006

Acts Referred:

Motor Vehicles Act, 1988 " Section 166

Citation: (2007) 3 ALD 141 : (2007) 1 APLJ 148

Hon'ble Judges: C.Y. Somayajulu, J

Bench: Single Bench

Advocate: V. Kiran Rao, for the Appellant; Kota Subba Rao, for the Respondent

Judgement

C.Y. Somayajulu, J.

Appellants filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 (the Act) seeking compensation of Rs.

2,00,000/- for the death of their unmarried son Brij Gopal Tiwari (deceased) said to be aged 24 years earning about Rs. 5,000/- p.m. from

business, alleging that when the deceased along with his friend was proceeding on a scooter, a lorry belonging to the first respondent and insured

with the second respondent being driven in a rash and negligent manner came in the opposite direction of the scooter and dashed the scooter

resulting in the death of the deceased.

2. First respondent chose to remain ex parte.

3. Second respondent filed its counter inter alia putting the appellants to proof of the averments in the petition.

4. The claim petition filed by the appellants and another claim petition filed by the legal representatives of another victim were clubbed and

common evidence was recorded. In support of the case of the appellants. The first appellant was examined as P.W.1 and the first claimant in

another claim petition filed by the legal representative of other victim was examined as P.W.2 and another witness was examined as P.W.3 and

Exs.A.1 to A.8 were marked on behalf of the claimants. No evidence either oral or documentary was adduced on behalf of the second

respondent.

5. The Tribunal held that the accident resulting in the death of two victims occurred due to the rash and negligent driving of the lorry of the first

respondent and awarded Rs. 1,00,000/- as compensation to the claimants. Dissatisfied with the compensation awarded to them, the claimants

preferred this appeal.

6. Since the appeal is by the claimants seeking higher compensation than that was awarded and since the finding of the Tribunal that the accident

occurred due to the rash and negligent driving of the driver of the lorry of the first respondent has become final, the only point for consideration is

to what compensation are the appellants entitled to.

7. The contention of the learned Counsel for the appellants is that inasmuch as the deceased was unmarried and since the evidence of P.W.1, the

father of the deceased, that the deceased was earning Rs. 5,000/- p.m. stands unrebutted the Tribunal was in error in not awarding adequate

compensation. Relying on Nidamanuri Remana Kumari and Another Vs. Erukula Sessa Rao and Another, , he contended that the contribution of

the deceased should be taken at least at Rs. 10,000/- p.a. and in view of Schedule II of the Act, the appropriate multiplier as mentioned in

Schedule II has to be adopted and if it is so done, the appellants would be entitled to the compensation claimed.

8. The contention of the learned Counsel for the second respondent is that since the Apex Court in Bijoy Kumar Dugar Vs. Bidyadhar Dutta and

Others, , held that dependency has to be worked out on the basis of the earnings of the deceased at the time of the accident and that the claimants

have to prove that the deceased could have earned more amount from time to time or had special merits or qualifications or opportunity which

would have improved his income in future, and have also observed in case of unmarried victims, the dependency has to be calculated on the basis

that he would get married and will have to raise a family and the monthly allowances he would be giving to his parents would be cut down, the

compensation arrived at by the Tribunal cannot be said to be erroneous.

9. Since the appellants are the parents of the unmarried deceased, it is not the age of the deceased but, it is the age of the mother of the deceased

i.e. second appellant, is relevant for fixing the appropriate multiplier. Appellants did not adduce any reliable evidence to show their ages.

Unfortunately, the Tribunal without mentioning as to how it has arrived at the figure of Rs. 1,00,000/- granted a lumpsum compensation of Rs.

1,00,000/- to the appellants. So, the basis on which that figure was fixed by the Tribunal is not known. The Tribunals while awarding

compensation should state under what head they are awarding what amount of compensation so that the appellate forum can find out the

entitlement or otherwise of the claimants for the amount awarded by the Tribunal.

10. The evidence of P.W.1 is that the deceased was 24 years by the time of his death and was not married and was a hawker earning Rs. 5,000/-

p.m. and so, the appellants are entitled to Rs. 2,00,000/- because they were dependents on him. During cross-examination, he admitted that he did

not produce any certificate to show the income of the deceased and denied the suggestion that the deceased was not earning Rs. 5,000/- p.m.

11. The evidence of P.Ws.2 and 3 is not relevant for deciding the point.

12. Nidamanuri Remana Kumari and Another Vs. Erukula Sesha Rao and Another, relied on by the learned Counsel for the appellants is a case

relating to the death of an unmarried girl. The contribution made by her parents to the claimants was taken as Rs. 10,000/- p.a. Since that decision

did not take into consideration the decision of the Apex Court in Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, as to how the

compensation in respect of unmarried have to be arrived at i.e. dependency has to be calculated on the basis that the deceased would get married

and will have a family and so the monthly allowances to their parents would be cut down, I do not wish to take that decision into consideration and

I wish to follow the principles laid down by the Apex Court in Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, . The evidence of P.W.1 is

silent as to number of children they have. There is nothing on record to show that the deceased was the only son of theirs. Why the first appellant

(P.W.1) who is said to be aged 50 years has shown his occupation as nil is not known and is not mentioned by him while giving evidence as

P.W.1. Obviously to show that appellants were solely dependent on the income of the deceased, P.W.1 must have shown his occupation as nil. In

fact, as per Section 166 of the Act, only the legal representative of a deceased victim would be entitled to compensation. Mother only is the heir to

the estate of a deceased son, as per Hindu Succession Act and so second appellant only would be entitled to make a claim for compensation. It is

well known that wife has to be maintained by the husband. During the lifetime of an able bodied father, son is not bound to maintain his mother. The

primary duty to maintain the second appellant is on the first appellant. So first appellant cannot, on the basis that the deceased was earning, refuse

to maintain and take care of the second appellant. Be that as it may, even assuming that the deceased was a hawker and was contributing some

amount to the appellants for their maintenance, as observed by the Apex Court, that contribution that was being made by the deceased to the

appellants would be reduced in due course, after he gets married and begets children. So the average contribution of the deceased to the

appellants can be taken as around Rs. 800/- p.m. or Rs. 10,000/- p.a.

13. keeping in view the age of the deceased, the age of the second appellant can be taken as around 47 years. Learned Counsel for the second

respondent relying on Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Others, contended that since the Apex Court adopted

the multiplier of 12 for a person of 38 years, the multiplier for a person aged 47 years should be far less. Since the Apex court in U.P. State Road

Transport Corporation Vs. Krishna Bala and Others, held that the multiplier in Schedule II is only a guide and is not invariable rule, the multiplier

can be taken as "12" and so the pecuniary damages payable to the appellants due to the death of the deceased would come to Rs. 1,20,000/-

(Rs.10,000 x 12). As per Schedule II they are entitled to funeral expenses of Rs. 2,000/- and loss of estate of Rs. 2,500/- also. Therefore, the

appellants are entitled to Rs. 1,24,500/- (Rs.1,20,000 + Rs. 2,000/- + Rs. 2,500) as compensation for the death of the deceased.

13. The contention of the learned Counsel for the second respondent is that inasmuch as the driver of the offending vehicle was not having a valid

driving licence, the Tribunal was in error in making the second respondent also liable for payment of compensation. It is his contention that the

second respondent filed an appeal questioning the award with a delay condonation petition and the appeal is not yet numbered and so, it is not

listed with this appeal.

14. The Apex Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, clearly held that breach of policy condition i.e. like driver not

having a valid driving licence has to be proved by the insurer for avoiding its liability. So the insurer has to prove that the insured was guilty of

negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed

driver etc. As there is no such evidence in this case, the second respondent cannot be exempted from liability. If the second respondent is able to

prove that the first respondent was guilty of negligence, and knowingly entrusted the vehicle to a person who is not having a valid licence, it can

initiate proceedings for recovery of the amount from the owner, but no relief can be given to the second respondent in this appeal.

15. In the result, the appeal is allowed in part and an award is passed for Rs. 1,24,500/- with interest at 12% p.a on Rs. 1,00,000/- from the date

of petition till the date of deposit as awarded by the Tribunal and with interest at 9% p.a., on Rs. 24,500/-, awarded in this Court, from this date till

the date of deposit into the Court with proportionate costs in the Tribunal. Rest of the claim of appellants is dismissed without costs. Parties are

directed to bear their own costs in this appeal.