Rayees Fatima Vs M/s. Super Reclamations Private Limited and Another

Court: Andhra Pradesh High Court

Date of Decision: Oct. 31, 2013

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

Bench: Single Bench

Advocate: B. Parameshwara Rao, for the Appellant;

Final Decision: Partly Allowed

Judgement

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-II Additional Chief Judge, City Civil Court, Hyderabad, (for short, "Tribunal") in M.V.O.P. No. 186 of

2001 dated 03.11.2003, awarding compensation of Rs. 93,000/- (Rupees ninety three thousand only) as against the claim of Rs. 2,00,000/-

(Rupees two lakhs 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 B. Parameshwara Rao, the learned counsel for the appellant. The 2nd respondent-Oriental Insurance Company Limited

served was called absent with no representation. 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 15.11.2000 due to the rash and negligent

driving of the driver of the crime vehicle (Maruthi Zen bearing No. HR 35 B 0056) belongs to the 1st respondent insured with the 2nd respondent

covered by Ex. B.1 policy, same dashed against the Scooter that was being driven by the brother of the Claimant, and the Claimant is its pillion

rider by name Rayees Fathima, aged about 20 years, resident of Moti Darvaza, Golkonda, Golkonda Mandal, Hyderabad, claimed working as a

teacher ques school with earning of Rs. 2500/- per month and as a result the claimant sustained grievous fractured injury i.e. central pelvis region

right hip fracture dislocation (as per Ex. A.3 medical certificate, Ex. A.5 discharge sheet, Ex. A.7 & 10- x-rays and Ex. P.9 disability certificate

showing as if 40% disability issued by the private doctor S. Venkataramana, ortho), which occurrence is covered by Ex. A.1 First Information

Report in Cr. No. 203 of 2000 u/sec. 338 IPC and Ex. A.2 charge sheet. The Tribunal from the evidence of P.W. 1-claimant with reference to

Ex. A.3 medical certificate, Ex. A.5 discharge sheet, Ex. A.7 and 10- x-rays and Ex. P.9 disability certificate (showing as if 40% disability issued

by the private doctor S. Venkataramana, ortho) come to the conclusion of P.W. 1 got permanent disability awarded Rs. 93,000/- viz., Rs.

20,000/- for the injuries, Rs. 5000/- for pain and sufferance and extra nourishment and transport, Rs. 3000/- for medical attendant, Rs. 25,000/-

for medical bills and Rs. 40,000/- for the disability as 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 was taken

note of though not specified of 40%, 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 multiplier method 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 Parry v. Cleaver 1969 (1) All. E.R. 555 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, 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 fracture sustained by P.W. 1 is not proved by examination of the said doctor

who issued Ex. P.9 certificate showing as if there is 40% disability of permanent nature caused there from, it can be taken as not proved and also

from the fact that there was no finding of the Tribunal of the disability is 40% but for to say there is a permanent disability in taken note of by the

Tribunal. Thus the appeal claim is limited to the extent not correctly taken the percentage of disability and the multiplicand and multiplier that to be

applied. This Court from Ex. A.3 medical certificate, Ex. A.5 discharge sheet, Ex. A.7 & 10- x-rays and Ex. P.9 disability certificate taken by

overall consideration of the same with reference to P.W. 1 evidence and even from her saying she is working as computer operator at one breath

and as teacher at other breath and charge sheet also show that she is computer operator and thereby there is no loss of avocation or earnings with

prospects, come to the conclusion of the permanent disability is only 10% and that the income of the claimant as deposed is taken at Rs. 2,500/-

p.m., with 50% increase thereon of future prospects comes to Rs. 3,750/- p.m. and for 10% it comes to Rs. 375/- by adopting multiplier 18 as

laid down in the latest expression of the Apex Court in Rajesh and Others Vs. Rajbir Singh and Others, 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 Rs. 375 x 12 = Rs. 4,500 x 18 = Rs. 81,000/- and

for pain and sufferance Rs. 10,000/, loss of earnings during treatment, attendant and transport charges Rs. 7,000/and for medical expenses and

treatment of Rs. 7,000/- = Rs. 1,05,000/- 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 inRajesh''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.

93,000/- to Rs. 1,05,000/- (Rupees one lakh five 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.