A.P.S.R.T.C. and Another Vs Pakala Rupamma and Others

Court: Andhra Pradesh High Court

Date of Decision: Oct. 13, 2006

Acts Referred: Motor Vehicles Act, 1988 â€" Section 163A

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

Bench: Single Bench

Advocate: P. Rajani Reddy, for the Appellant; None, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

C.Y. Somayajulu, J.
Respondents 1 to 5, who are the widow, children and mother of Dharmaiah (the deceased), filed a claim petition

under the provisions of Motor Vehicles Act, 1988 (the Act) seeking compensation of Rs. 8,00,000/- from appellants and 6th respondent alleging

that the 6th respondent while driving the bus belonging to the appellants dashed against the TVS moped being driven by the deceased, who was

earning Rs. 6,000/- per month as salary, resulting in his death. 6th respondent remained ex parte. Appellants filed their counter contending inter alia

that inasmuch as the 6th respondent observed a lorry coming in his opposite direction he was driving the bus slowly, but suddenly a person driving

a Hero Majestic moped emerged from behind the lorry by overtaking that lorry in a rash and negligent manner and dashed his moped against the

right bumper of the bus and fell down and that there was no negligence on the part of 6th respondent, and as the accident occurred only due to the

negligence of the deceased they are not liable to pay compensation to respondents 1 to 5.

2. In support of their case, respondents 1 to 5 examined three witnesses as P.Ws.1 to 3 and marked Exs.A.1 to A.6. In support of their case,

appellants examined the 6th respondent as R.W.1, but did not adduce any documentary evidence. The Tribunal held that the accident occurred

only due to the rash and negligent driving of the 6th respondent and awarded 6,70,000/- as compensation to respondents 1 to 5. Aggrieved by the

same, the respondents 1 and 2 before the Tribunal preferred this appeal.

3. The contention of the learned Counsel for appellants is that the Tribunal was in error in accepting the evidence of P.Ws.2 and 3, who were the

colleagues of the deceased, as they being interested in respondents 1 to 5 would not speak real facts, and was in error in not believing the evidence

of R.W.1 and that the Tribunal was in error in applying the multiplier mentioned in the Second Schedule of the Act though the claim is not made u/s

163-A of the Act, and when it chose to apply Second Schedule of the Act the Tribunal should have applied all its provisions but not merely the

multiplier and should not have granted more amount than that is contemplated by the Second Schedule of the Act under other heads. There is no

representation on behalf of respondents 1 to 5 though they engaged a counsel.

4. The points for consideration are

1) Whether the accident involving the deceased took place only due to the rash and negligent driving of the bus by 6th respondent?

2) To what compensation, if any, are the respondents 1 to 5 entitled to?

POINT No. 1:

5. Ex.A.1, copy of the First Information Report issued in connection with the accident, shows that it was given by P.W.3. Ex.A.2 inquest

panchanama shows that P.Ws.2 and 3 were examined as eye witnesses at the time of inquest. So, there is a possibility of their being present

somewhere near the scene of accident which took place at about 10.00 p.m. on 13.09.1996. In Ex.A.1, P.W.3 stated "" "". The case of the

appellants, and the evidence of R.W.1 also, is that the deceased, in a bid to overtake the lorry that was proceeding ahead of him went to the right

side of the road (in the direction in which the deceased was proceeding) and dashed against the bus. P.Ws.2 and 3 denied the suggestion that a

lorry was proceeding in the opposite direction of the bus at or before the time of accident. Their denial cannot be accepted because the possibility

of the deceased falling under the left tyre of the bus arises only if he went to the wrong side of the road in a direction in which he was proceeding.

Had the bus dashed against him when he was proceeding on the correct side of the road, he would have fallen under the right wheel, but not under

the left wheel of the bus. For reasons best known to the parties, they did not choose to file either the rough sketch of scene of accident or the

panchanama of scene of accident though Ex.A.6, copy of the charge sheet, clearly shows that the investigation officer conducted a panchanama of

scene of accident and drew a rough sketch of the scene of accident. The rough sketch and panchanama of scene of accident would have helped

the Tribunal in coming to a conclusion as to on what part of the road the accident actually took place and would also have revealed the places from

where P.Ws.2 and 3 claim to have witnessed the accident, and the possibility of their observing the accident. The possibility of P.Ws.2 and 3

giving evidence to help the claimants cannot be ruled out. Since the accident took place at about 10.00 p.m. it can be presumed that the head lights

of the vehicles involved in the accident were switched on. So, had the deceased been careful he could have averted the accident. Since both

parties failed to produce the rough sketch or panchanama of the scene of accident and since the accident occurred due to a head on collision

between two vehicles, if one of the drivers of any of the vehicles was alert, he could have averted the accident and so it is clear that drivers of both

the vehicles involved in the accident were negligent at the time of accident. In the facts and circumstances of the case, it can be safely held that the

deceased was guilty of 20% contributory negligence and the 6th respondent was guilty of 80% negligence at the time of accident and I hold the

point accordingly.

POINT No. 2:

6. Ex.A.4, salary certificate of the deceased issued by Singareni Colleries Company Limited, shows that his take home salary was Rs. 4,889/- for

the month of January 1996; Rs. 4,108/- for the month of February 1996; and Rs. 5,119/- for the month of March 1996 though his gross salary for

those months was Rs. 6,402.08ps, Rs. 5,693-50ps and Rs. 6,827-15ps respectively. The deductions made towards Provident Fund would

accrue to the benefit of the deceased himself and ultimately the deceased or his legal representatives would have the benefit thereof. Respondents 1

to 5 did not explain the other recoveries shown in Ex.A.4. But the fact remains that the take home salary of the deceased was more than Rs.

4,000/- only but not Rs. 6,000/- or above as alleged by respondents 1 to 5. Since the deceased''s contribution to the respondents 1 to 5 for their

maintenance etc., can only be from out of his take home salary, and as he could not have contributed some thing more than what his take home

salary was, the contribution of the deceased to the respondents 1 to 5 for their maintenance etc., can be taken as around Rs. 3,000/- per month or

Rs. 36,000/- per annum.

7. There is no reliable evidence on record relating to the age of the deceased, though the deceased was an employee in Singareni Colleries

Company Limited. Appellants who could have produced the date of birth recorded in the Singareni Colleries Company Limited, for their own

reasons did not choose to do so. Ex.A.5, driving licence of the deceased, shows that the deceased was aged 37 years on 30.03.1988. Since the

accident occurred on 13.09.2006 i.e. about 8 years after Ex.A.5, the age of the deceased must be more than 45 years. So, the Tribunal was in

error in observing that the deceased was aged between 35 to 40 years. Recently the apex Court in U.P. State Road Transport Corporation Vs.

Krishna Bala and Others, observed that the multiplier given in Second Schedule of the Act is only to serve as a guide and that Courts are not

bound to take the multiplier mentioned in the Second Schedule of the Act for arriving at the compensation payable to the legal representatives of a

victim in a motor vehicle accident. The multiplier as per Second Schedule in respect of persons aged between 45 to 50 years is "13". But the

multiplier as per Bhagwandas Vs. Mohd. Arif, in respect of the persons aged 45 years is "10.45". Therefore, the appropriate multiplier can be

taken as "11" and so the pecuniary damages payable to the respondents 1 to 5 would be Rs. 36,000/- x 11 = Rs. 3,96,000/-.

8. Since first respondent is the widow of the deceased she is entitled to loss of consortium of Rs. 15,000/-. As held in Y. Varalakshmi and Others

Vs. M. Nageswara Rao and Others, a minimum compensation of Rs. 15,000/- is payable to the appellants towards non-pecuniary damages.

Keeping in view of the fact that the deceased was aged about 45 years at the time of his death and was having long service ahead of him and could

have saved considerable amount from his earnings by contributing amounts from his salary towards provident fund etc., the non-pecuniary

damages can be fixed at Rs. 1,50,000/- and so the respondents 1 to 5 would have been entitled to Rs. 3,96,000/- + Rs. 15,000/- + Rs.

1,50,000/- = Rs. 5,61,000/-. But as I held that the deceased was 20% negligent at the time of accident, compensation payable to respondents 1

to 5 would be 80% of Rs. 5,61,000/- = Rs. 4,48,800/- which can be rounded off to Rs. 4,50,000/-. The point is answered accordingly.

9. In the result, the appeal is allowed in part. The award passed by the Tribunal is modified and an award is passed for Rs. 4,50,000/- in favour of

respondents 1 to 5 and against the appellants and 6th respondent with interest at 9% p.a. from the date of petition till the date of deposit into Court

with proportionate costs in the Tribunal. Rest of the claim of the respondents 1 to 5 is dismissed without costs. From out of the said amount, each

of the respondents 2 to 5 are entitled to Rs. 87,000/- and interest thereon and the first respondent is entitled to Rs. 1,07,000/- and interest

thereon. Parties are directed to bear their own costs in this appeal.