
(2008) 04 AP CK 0005

Andhra Pradesh High Court

Case No: C.M.A. No. 2906 of 2002

United India Insurance
Co. Ltd.

APPELLANT

Vs

Gouri Parvathi and
Others

RESPONDENT

Date of Decision: April 3, 2008

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166, 170

Citation: (2009) ACJ 399

Hon'ble Judges: P. Swaroop Reddy, J; Ghulam Mohammed, J

Bench: Division Bench

Advocate: A. Malathi, for the Appellant; A. Krishnam Raju, V. Ajay Kumar and B. Venkata Ratnam, for the Respondent

Judgement

Ghulam Mohammed, J.

This appeal is filed by United India Insurance Co. Ltd. aggrieved by the compensation granted in O.P. No. 778 of 1997 on the file of Motor Accidents Claims Tribunal, Ranga Reddy District by order dated 17.4.2002.

2. The facts necessary for deciding this appeal are as follows: On 17.1.1997 S.K.C. Ramabhadra Raju was travelling in Maruti Esteem car bearing No. AP 09-M 7997 and while so, a lorry bearing No. AP 09-U 1794 coming from the opposite direction at high speed and in a rash and negligent manner, dashed the said car resulting in death of the above person. The wife, children and mother of the deceased filed the above O.P. u/s 166 of the Motor Vehicles Act claiming compensation of Rs. 60,00,000 from the owner and insurer of the lorry involved in the accident. The owner remained ex parte while the insurer of the lorry contested the O.P. denying the manner of accident, age, income and avocation of the deceased. The employer of the deceased and the insurer of Maruti Esteem car have also been impleaded. The Tribunal after framing necessary issues and

after due inquiry held that the accident occurred due to rash and negligent driving of the lorry by its driver and awarded compensation of Rs. 25,35,000 as against the owner and insurer of the lorry involved in the accident and the claim as against insurer of the car was dismissed. Aggrieved thereby, the insurance company preferred this appeal.

3. Heard the learned Counsel for the appellant insurance company and learned Counsel for the contesting respondents.

4. Learned Counsel for the appellant vehemently contended that the Tribunal ought to have deducted one-third of the salary towards personal expenses and the Tribunal has not given reasons for taking into account the perquisites while arriving at the compensation. Learned Counsel has drawn our attention to the decision of the Supreme Court in [New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others](#), and contended that the age of the claimant-father has to be taken into account.

5. The learned Counsel for contesting respondents contended that the insurance company has not obtained the permission u/s 170 of the Motor Vehicles Act and further, the Tribunal has given adequate reasons and applied right multiplier taking into account the age of the deceased, as such the impugned award does not call for any interference.

6. We have considered the submissions made on either side and perused the evidence on record. PW 1 is the wife of the deceased, PW 2 is the eyewitness to the accident and PW 3 is the Deputy Manager of Everest Organics Pvt. Ltd. PW 2 stated that he was riding the scooter on the date of accident and he has seen a lorry going from Sadasivapet to Hyderabad and dashed the car coming in the opposite direction and that accident occurred due to rash and negligent driving of the lorry by its driver. Nothing is elicited in cross-examination to discredit his testimony. Apart from this oral evidence, Exh. A1, copy of F.I.R. in Crime No. 9 of 1997 of P.S. Kondapur, Medak District; Exh. A2, certified copy of charge-sheet; Exh. A3, report of the Motor Vehicles Inspector; Exh. A4, inquest report and Exh. A5, post-mortem certificate, were marked. The oral and documentary evidence would categorically go to show that the accident occurred due to rash and negligent driving of the lorry by its driver.

7. With regard to quantum of compensation, the deceased was aged 42 years at the time of accident and Exh. A8 is the S.S.L. certificate showing date of birth as 25.9.1954. The deceased was working in the executive cadre in Everest Organics Pvt. Ltd. and this fact was spoken by PW 3, who is the Deputy Manager in the company. It is seen from the record that the claimants claimed that he was earning Rs. 19,000 per month besides other perquisites to an extent of Rs. 50,000. It is to be noticed that the employment of the deceased is not an assured one and there is no evidence to show that the company is well established and was making profits year after year and as such, his income cannot be taken as Rs. 19,000 per month. Having regard to the facts and circumstances, we are inclined to take the income of the deceased as Rs. 19,000, which is evidenced by Exh. A12 letter addressed by Everest Organics Pvt. Ltd. The income of Rs. 19,000 per month

alone is taken excluding the perquisites. Having taken the monthly income of deceased at Rs. 19,000, one-third of it has to be deducted towards personal living expenses and it works out to Rs. 12,667. Annual loss of dependency works out to Rs. 1,52,004. As per Exh. A8, the deceased was aged 42 years at the time of accident and in the circumstances, we are inclined to apply multiplier "12". The total loss of dependency calculated on the multiplier "12" comes to Rs. 18,24,048 (Rs. 1,52,004 x 12). The deceased had left behind his wife, children and mother. In these circumstances, we are inclined to award the conventional sum of Rs. 15,000 towards loss of consortium and Rs. 15,000 towards loss to estate. Thus, the claimants are entitled to the total compensation of Rs. 18,54,048. The wife is entitled to the compensation awarded towards loss of consortium.

8. In the result, appeal is partly allowed reducing compensation to Rs. 18,54,048 with interest at 7.5 per cent per annum from the date of petition till realisation.