

(2007) 03 AP CK 0011

Andhra Pradesh High Court

Case No: C.M.A. No. 4480 of 2003 and C.M.A.M.P. No. 2512 of 2005

Shaik Mastan Bi and Others

APPELLANT

Vs

D. Suryaprakash Rao and Others

RESPONDENT

Date of Decision: March 7, 2007

Citation: (2008) ACJ 1509

Hon'ble Judges: B. Prakash Rao, J

Bench: Single Bench

Advocate: B. Parameswara Rao, for the Appellant; R. Venkat Rao, for the Respondent

Final Decision: Allowed

Judgement

B. Prakash Rao, J.

This appeal is filed by the claimants assailing the judgment and decree passed in M.V.O.P. No. 458 of 1997 dated 14.5.2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Fourth Additional District Judge, Guntur seeking enhancement of compensation.

2. The facts of the case in brief are that in an accident, which occurred on 30.3.97 at about 1.30 p.m., the deceased Baji Vali along with one Kurra Venkateswarlu were going to Ponnur on a cycle and by the time they reached Patchala Tadiparru Bus Stand, Suzuki motor cycle bearing No. ABG 6051 driven by the respondent No. 1 with high speed in a rash and negligent manner came from opposite direction and hit the cycle. As a result of which, both the deceased and the cyclist fell down and received injuries and the deceased died on the spot. The police registered a case in Crime No. 34 of 1997 against the driver of the motor cycle. Respondent Nos. 1, 3 and 4 remained ex parte. The dependants of the deceased claimed an amount of Rs. 1,50,000 as compensation against respondent Nos. 1 and 2 jointly and severally.

3. The insurance company, respondent No. 2, filed counter denying the allegations made in the petition and also stated that the compensation claimed by the petitioners therein is excessive. Respondent No. 4 also filed counter pleading

ignorance of the accident and further claimed that he sold away the vehicle to respondent No. 3 and at the time of accident, he was not the owner of the vehicle. He also stated that there is insurance coverage to the vehicle and insurance company, respondent No. 2 is responsible to discharge the liability.

4. Based on the above pleadings, the court below framed the following issues for trial:

(1) Whether the accident occurred due to rash and negligent driving of Suzuki motor cycle bearing No. ABG 6051 by its driver?

(2) Whether the petitioners are entitled to compensation and if so, to what amount and against whom?

(3) To what relief?

5. To substantiate their claim, the petitioners therein were examined as PWs 1 and 2 and marked Exhs. A1 to A6 on their behalf. On behalf of the defendants, no witnesses were examined and no documents were marked.

6. Based on the oral and documentary evidence, the court below found that the petitioners would be entitled for compensation of Rs. 2,86,500, however, the same was restricted to Rs. 1,50,000 as per the claim. Hence, the court below awarded an amount of Rs. 1,50,000 towards compensation at the rate of 8 per cent interest per annum. Hence, the present appeal is filed. Subsequent to the filing of appeal, appellant filed an application in C.M.A.M.P. No. 2512 of 2005 seeking amendment of the claim petition for enhancing the claim to the extent as recommended by the court below.

7. Having heard learned Counsel of both sides and perusing the material, I am of the view that under the provisions of the Motor Vehicles Act, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if Tribunal/court considers that claimant is entitled to get more compensation than what is claimed, it can pass such an award. The only embargo is that it should be just compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. Further, having regard to the principles laid down in [Nagappa Vs. Gurudayal Singh and Others](#), there is no bar for the Claims Tribunal to award compensation in excess of what is claimed, particularly when the evidence which is brought on the record is sufficient to pass such award. In cases where there is no evidence on record, the court may permit such amendment and allow to raise additional issue and give an opportunity to the parties to produce relevant evidence.

8. In view of the rule laid down by the Supreme Court in [Nagappa Vs. Gurudayal Singh and Others](#), the application filed by the petitioners in C.M.A.M.P. No. 2512 of 2005 is hereby allowed and the court below is directed to permit the petitioners therein to amend the claim made by them and after framing an additional issue to

that effect, decide the matter afresh after giving an opportunity of hearing to the parties.

9. The appeal is accordingly allowed with costs.