

(1995) 10 AP CK 0010

Andhra Pradesh High Court

Case No: C.M.A. No's. 792 and 1385 of 1993

R. Venkateshwara Rao and Co.
and Another

APPELLANT

Vs

T. Usha Ravi and Others

RESPONDENT

Date of Decision: Oct. 10, 1995

Citation: (1995) 3 ALT 490

Hon'ble Judges: Motilal B. Naik, J; A. Gopal Rao, J

Bench: Division Bench

Advocate: K.L.N. Rao, for the Appellant; M.S.R. Subrahmanyam, for the Respondent

Judgement

Motilal B. Naik, J.

These two civil miscellaneous appeals are filed against the order passed in O.P. No. 593 of 1990 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Visakhapatnam (for short "the MACT).

2. C.M.A. No. 1385 of 1993 is filed by the claimants in O.P. No. 593 of 1990; whereas C.M.A. No. 792 of 1993 is filed by the second and third respondents in O.P. No. 593 of 1990.

3. The facts, in brief, are that the deceased Tangappan Ravi, an employee of Indian Navy stationed at Visakhapatnam, met with a motor accident on 4.8.1990 at about 6.30 p.m., near Punjabi Hotel, Sainagar, Visakhapatnam. It is stated that while he was going on his motor cycle in the opposite direction, lorry bearing No. AHQ 5538 coming in high speed, dashed against the motor cycle being driven by the deceased as a result of which the deceased sustained injuries and died on the spot. One Vasudevan Pradeep Kumar, PW 8 and others shifted the deceased to the Government Hospital, Visakhapatnam, where he was declared dead. A claim was made by the dependants of the deceased, viz., his wife who is aged about 29 years, his minor daughter and old parents who are claimant Nos. 1, 2, 3 and 4 respectively. The claimants made a total claim of Rs. 10,00,000/- on various counts. However, the

MACT awarded compensation of Rs. 4,37,800/-.

4. On behalf of the claimants, PWs 1 to 10 were examined and Exhs. A-1 to A-20 were got marked. On behalf of respondents, only RW 1 was examined and Exh. B-1 was got marked. Exhs. X-1 to X-4 were marked with consent.

5. The MACT, basing on the oral and documentary evidence, awarded a total compensation of Rs. 4,37,800/-. From the said amount, a sum of Rs. 25,000/- was awarded under "no fault liability".

6. As against the said award, the claimants and the second and third respondents in the O.P. No. 593 of 1990 are before this Court by way of these two appeals.

7. In the appeal, C.M.A. No. 792 of 1993 filed by respondent Nos. 2 and 3, Mr. K.L.N. Rao, learned Counsel for the appellants, has contended that the MACT has grossly erred in awarding abnormal compensation without there being sufficient reasons. It is submitted by Mr. K.L.N. Rao that the contributory negligence has not been taken note of by the MACT while awarding compensation. It is his further submission that had the MACT taken note of the fact that the deceased was also responsible for the negligence, the amount of compensation granted could have been substantially reduced. This apart, it is also stated that the evidence of the doctor, PW 9, who has stated that the death was caused on account of "shock and haemorrhage", which would go to show that the death is due to other factors also, which fact the MACT should have taken into consideration while fixing the liability for awarding reasonable compensation.

8. As against the plea of Mr. K.L.N. Rao, Mr. M.S.R. Subrahmanyam, learned Counsel for the appellants in C.M.A. No. 1385 of 1993, stated that on the basis of the evidence available on the record, the argument that there is a contributory negligence on the part of the deceased also cannot be accepted. It is stated that there is nothing in the evidence of PW 9 which brings home the truth that the deceased was also responsible for the incident. On the contrary, it is stated by Mr. M.S.R. Subrahmanyam that claimants are entitled to more compensation. His endeavour is to say that in view of the law laid down by the Supreme Court in [General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others](#), the future earnings should have been taken into account by applying the relevant multiplier. The MACT could have fixed the average income at Rs. 3,000/- p.m. instead of Rs. 2,000/- after making a provision for deducting of Rs. 1,300/- p.m. It is stated that the deceased was a Navy personnel and was getting free ration for himself and other items at concessional rates.

9. We have heard both the counsel at length.

10. Insofar as the contention of Mr. K.L.N. Rao that there is contributory negligence on the part of the deceased is concerned, we are afraid, there is nothing before us to indicate in that direction except the self-surviving statement made by RW 1 who is

the driver of the vehicle. On the contrary, we are convinced that the MACT has rightly come to the conclusion and rejected the plea put forth by the respondents in that behalf. As far as the claim of learned Counsel for the appellants in C.M.A. No. 1385 of 1993 for arriving at the loss of future earnings, the proper course should have been to determine the dependency at Rs. 3,000/- per month, we do not think such a ratio is contemplated in the decision laid down by the Supreme Court cited (supra). Having regard to the decisions rendered by this Court in series of cases following the decision of the Supreme Court, we are of the view that once a reasonable amount is granted and directed to be paid in lump sum, the entire amount so directed is kept in deposits, the future interest would be well-served. May be, had the deceased lived for few more years, he would have got higher salary and also other incidental benefits. The liability would have been more also. His net contribution to his family would have been less also. Therefore, taking the vagaries of uncertainties, we are of the view, awarding reasonable lump sum compensation by applying relevant multiplier is just and proper, which, in our view, takes care of the future interest also.

11. On hearing both the counsel and on discussing the various aspects raised by the learned Counsel, we are of the view that the order passed by MACT could be modified in the following manner which would probably meet the ends of justice.

12. As seen from the order of the MACT, an amount of Rs. 1,300/- has been deducted towards personal expenses of the deceased. It is stated that the deceased was earning an amount of Rs. 3,340/-. Though the claimants have stated that the deceased being naval employee was getting free ration and the entire amount is spent for the family welfare, the evidence discloses that the deceased was consuming alcohol. We, therefore, take it that the personal expenses of the deceased if not 73rd of his salary, but on an average, it could be about Rs. 1,040/- per month. If this amount is deducted from Rs. 3,340/-, the remaining amount of Rs. 2,300/- could be taken as his contribution to his family. For one year, it would come to Rs. 27,600/-. It is stated that the deceased was aged about 29 years. The relevant multiplier in this case is 17 which has rightly been applied by the MACT for the purpose of estimating the loss of future earnings. By applying the relevant multiplier, loss of future earnings could be estimated at Rs. 4,69,200/-.

13. It is stated by Mr. Subrahmanyam that the MACT has awarded an amount of Rs. 5,000/- towards loss of consortium. Following the decision of the Supreme Court cited (supra), we are of the view that the wife is entitled to Rs. 15,000/- towards loss of consortium instead of Rs. 5,000/-. It is further stated that Rs. 7,500/- has been granted towards conventional expenses and another sum of Rs. 7,500/- has been awarded towards pain and suffering. That is to say, an amount of Rs. 15,000/- has been granted under the above two heads. Now, it is well settled that the dependants are entitled to a sum of Rs. 15,000/- towards loss of estate and we, therefore, convert Rs. 15,000/- granted under the above two heads, towards loss of

estate only. Accordingly, we hold that the claimants are entitled for a sum of Rs. 15,000/- under the head of loss of estate.

14. Insofar as the amount of Rs. 17,000 granted towards transportation facilities is concerned, we are not persuaded to reject the said claim and, therefore, we hold that the claimants are entitled to the said amount. Coming to the grant of Rs. 1,000 towards the funeral expenses, we do not think that this grant of Rs. 1,000/- towards funeral expenses is permissible. Accordingly, we disallow the said amount of Rs. 1,000 granted to the claimants.

15. Thus, the claimants are entitled to the following amounts:

- (1) loss of future earnings Rs. 4,69,200;
- (2) loss of consortium to the claimant No. 1 Rs. 15,000/-;
- (3) loss of estate to all the claimants Rs. 15,000/-;
- (4) transportation charges Rs. 17,000/-.

16. Thus, we hold that the claimants are entitled to a total compensation of Rs. 5,16,200/-. This apart, the claimants are also entitled to the interest as awarded by the MACT.

17. While awarding compensation, the MACT directed an amount of Rs. 1,12,800 to be paid to the first claimant being the wife of the deceased with accrued interest. It has also awarded an amount of Rs. 2,00,000/- to the second claimant being the minor child of the deceased with accrued interest. As far as the claimant Nos. 3 and 4 are concerned, an amount of Rs. 60,000/- was awarded to claimant No. 3 being the mother of the deceased with accrued interest and an amount of Rs. 40,000/- was awarded to the 4th claimant being the father of the deceased with accrued interest.

18. While disposing of these appeals, we are granting an amount of Rs. 78,400 over and above the amounts awarded by the Tribunal. It is stated by Mr. K.L.N. Rao that an amount of Rs. 25,000/- under "no fault liability" has already been deposited and withdrawn by the claimants. This amount has necessarily to be deducted and therefore, only the balance amount of Rs. 53,400/- has to be apportioned to these claimants. Since claimant No. 1 being the wife of the deceased, is entitled for a sum of Rs. 15,000/- towards loss of consortium which she is exclusively entitled to, apart from an amount of Rs. 1,12,800/- which has already been awarded by the MACT. This apart, the first claimant is also entitled to an additional amount of Rs. 19,200. Thus, the first claimant, in all, is entitled to Rs. 1,47,000/- with accrued interest. The second claimant being minor daughter of the deceased was awarded a sum of Rs. 2,00,000/- by the MACT. The second claimant is also entitled to an additional amount of Rs. 19,200/-. Thus, the second claimant is entitled to a total compensation of Rs. 2,19,200/- with accrued interest.

19. As far as claimant Nos. 3 and 4 are concerned, we are satisfied that the MACT has rightly awarded reasonable compensation and, therefore, no additional compensation need be diverted to them.
20. The respondents in the O.P. are liable to pay the entire amount of compensation as directed by us after deducting a sum of Rs. 25,000/- which has been awarded under "no fault liability" and which is said to have been deposited already, within a period of eight weeks from today.
21. The accident resulting in the death of late T. Ravi, a naval employee, took place on 4.8.1990, therefore, we are of the view, some provision has to be made enabling the claimants to withdraw certain amounts for meeting their urgent liabilities.
22. Since claimant Nos. 1, 3 and 4 are majors, being the wife, mother and father of the deceased, they are permitted to open savings bank account in their names separately and are also permitted to retain certain amounts in their accounts to meet urgent liability. In our view, the first claimant being the wife of the deceased is entitled to retain Rs. 50,000/- with accrued proportionate interest in the savings bank account which she is entitled to operate, which would enable her to withdraw the amounts as and when needed without any difficulty. Likewise, the third and fourth claimants, being the mother and father of the deceased, are entitled to retain an amount of Rs. 30,000/- each with proportionate interest in their savings bank accounts which they are entitled to operate without any difficulty. The first claimant being the natural guardian of the second claimant, minor daughter, is also entitled to receive the proportionate interest which falls to the share of the second claimant and is permitted to retain the said proportionate interest in her savings bank account. She shall be at liberty to use this proportionate interest which has fallen to the share of the second claimant for the benefit of the second claimant. The second claimant, in all, is entitled for an amount of Rs. 2,19,200/- with accrued interest. Since the first claimant has been permitted to withdraw the accrued interest and retain the same in her savings bank account, this lump sum amount of Rs. 2,19,200/- shall be kept in fixed deposit in any nationalised bank for a period of 60 months as indicated by the MACT. It is made clear that after maturity of the said fixed deposit, the claimants are entitled to withdraw the said amounts. It is further made clear that in the event of any urgency or necessity demanding withdrawal of these amounts by any of the claimants, it would be open to them to file appropriate application before the MACT by stating the compelling reasons and on such application being filed, the MACT shall examine such request and pass appropriate orders thereon.
23. In the result, C.M.A. No. 792 of 1993 is dismissed. C.M.A. No. 1385 of 1993 is allowed to the extent indicated above. In the circumstances, no costs.