(2014) 06 AP CK 0058

Andhra Pradesh High Court

Case No: M.A.C.M.A. No. 113 of 2005

The APSRTC — APPELLANT

Vs

G. Fayaz — RESPONDENT

Date of Decision: June 3, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 33
- Motor Vehicles Act, 1988 - Section 163A, 166

Citation: (2015) 1 AnWR 80

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

Bench: Single Bench

Advocate: P. Vinayaka Swamy, S.C, Advocate for the Appellant; K. Kishor Kumar Reddy, Advocate for the Respondent

Judgement

B. Siva Sankara Rao, J.

The Andhra Pradesh State Road Transport Corporation (for short, ''APSRTC Respondent in the claim petition filed this appeal, having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal-cum-District Judge, Chittoor, (for short, ''Tribunal'') in M.V.O.P. No. 64 of 2001 dated 12.12.2003, against awarding compensation of Rs. 3,50,000/- (Rupees three lakh fifty thousand only) with 9% p.a. interest as against the claim of the claimant (minor boy represented by mother guardian) for Rs. 4,00,000/- (Rupees four lakh only), in the claim petition under Section 166 of the Motor Vehicle Act, 1988 (for short, ''the Act'').

2. Heard Sri P. Vinayakaswamy, learned standing counsel for the appellant, Sri Kishore Kumar Reddy, learned counsel for the respondent. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for sake of convenience in the appeal.

3. The contentions in the grounds of appeal as well as submissions during course of hearing in nutshell are that, the award of the Tribunal is contrary to law, weight of evidence and probabilities of the case, that the Tribunal failed in not considering that there is a contributory negligence on the part of the injured by not following the traffic rules while crossing the road, that the Tribunal failed in considering that the injured boy came suddenly crossing the road in front of Maxi cab and touched the front portion of the bus and caused accident, that the Tribunal erred in arriving wrong conclusion on the huge quantum of compensation awarded without proof of actual expenditure incurred on various heads and also not believing the evidence of R.W. 1-driver of the crime bus, the rate of interest is also excessive to reduce, hence to set aside the award of the Tribunal and to refix the compensation fixing contributory negligence of injured and reduce the compensation also there from.

4. Whereas, it is the contention of the counsel for the claimant that the findings of the Tribunal are correct and compensation awarded is just and requires no interference while sitting in appeal but for dismissal of the appeal.

5. Now the points that arise for consideration in the appeal are:

1. Whether there is any contributory negligence on the part of both the driver of bus and injured boy and the compensation awarded by the Tribunal is highly abnormal and requires interference by this Court while sitting in appeal against the award and if so what amount to arrive as just compensation, with what rate of interest and with what observations?

2. To what result?

POINT-1;

6. The facts of the case are that on 28.06.2000 at about 9.00 a.m. while the claimant boy, aged 6 years was proceeding to school Sri Sarada Vidhya Mandir on foot and while crossing Kallur to Chittoor tar road, the crime bus bearing No. AP-10-Z-2214, belongs to the respondent-APSRTC, driven by its driver in rash and negligent manner at high speed without blowing horn and without following road rules, dashed against the claimant boy and the left front wheel of the bus ran over the left leg of the boy as a result, the left leg of the boy badly crushed and grievous and simple injuries were sustained by him all over the body, which occurrence is covered by Ex. A. 1 First Information Report and Ex. A. 2 charge sheet. The Tribunal basing on the oral and documentary evidence on record, awarded in all compensation of Rs. 3,50,000/- (Rupees three lakh fifty thousand only) out of Rs. 4,00,000/- against the respondent RTC of the claim petition.

7. Before coming to decide, correctness of the award findings including on quantum and rate of interest, any composite/contributory negligence to arrive 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. 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.

8. Compensation awarded should be neither unreasonable nor excessive or deficient, but just. The just compensation so to arrive and award as criteria is irrespective of the claim, in a claim made under Section 166 of M.V. Act, from the settled expressions of the Apex Court in Nagappa Vs. Gurudayal Singh and Others, that followed in Ningamma and Another Vs. United India Insurance Co. Ltd., and in Rajesh and Others Vs. Rajbir Singh and Others, on duty of the Court to award, just, equitable, fair and reasonable compensation.

9. What is just compensation is to be decided practically depending upon the facts and circumstances of each case and if necessary with some guess work with reference to the material on record. In this regard, it is to be kept in mind of what, 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 also observed that to compensate in money for pain and 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.

10. The Apex Court in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, at paragraph No. 12 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.

11. From above legal position and coming to the factual matrix, the injured boy was hardly aged 6 years and from the crush injury that resulted in the accident and after treatment for more than four months as in-patient initially at Government hospital, peeler at S.V.V.R. hospital, Tirupati where ultimately the left leg below knee of the injured from the crush injury was amputated as also deposed by the P.W. 3 doctor S. Suresh Reddy and issued the Ex. A. 5 disability certificate being member of the Regional Medical Board, Tirupati. The 50% disability also speaks from the schedule of W.C. ''Act, for amputation below knee of left leg in substantiating the same. Before coming to the quantum of compensation therefrom awarded by the tribunal is excessive or not, coming to any contributory negligence on the part of the injured from the evidence of P.Ws. 1 and 2 and of R.W. 1 respectively, what R.W. 1 driver of the bus deposed was admittedly, the left front wheel of the bus run over the injured-petitioner''s left leg and it was therefrom the injury sustained is crush injury to the foot and above. Coming to the counter of the respondent the bus allegedly stationed on the left side of the road behind the Maxi cab van and the Maxi cab van moved to further left and gave signal to bus and the bus driver blown horn and moved the bus slowly then the boy was running in front of the Maxi cab to cross the road and hit the left portion of the bus and fell in front of the bus. Even that is taken consideration so also the version in R.W. 1 chief examination as if so, that itself indicates the negligence on the part of the bus driver who got the last opportunity to avert the accident, had he really just moving the stopped bus from signal given by the front moving Maxi Cab, as it is not any simple injury from the fall of the boy by hitting the bus but for later run over the left leg above foot even, that was out of the sheer negligence of the bus driver, the tribunal having scanned the evidence from this perspective also when came to right conclusion of the accident was the result of the negligence of the bus driver that resulted the crush injury and its ultimate amputation below knee, for this Court while sitting in appeal even remotely other view also possible, not a ground to set aside much less interfere in any extent with said reasoned finding of the tribunal. From this now coming to the quantum, it cannot be disputed that the left leg below knee of the injured boy hardly 6 years since amputated, he has to suffer lifelong and he also requires artificial limb and its replacement and the Apex Court in Govind Yadav Vs. The New India Insurance Company Limited, held that the artificial limb requires replacement from time to time also and for that just to fix a consolidated sum to invest for interest and to make use the interest for the requirement in awarding therein a sum of Rs. 2,00,000/- for that having regard to the above, what the tribunal held in the judgment by referring to several expressions particularly in para-10 pages 9 to 11 in arriving the sum of Rs. 3,50,000/- for the amputation with loss of earnings of 50% permanent disability and the artificial requirement and its replacement, pain and

sufferance, medical expenses, attendant and transport charges etc., no way requires interference but for confirming the same. It is because even as per the three judge Bench expression of the Apex Court in Reshma Kumari and Others Vs. Madan Mohan and Another, the multiplier that is applicable for the persons upto 15 years is 15 to take and coming to the earnings as per the recent expression in Kishan Gopal and Another Vs. Lala and Others, following schedule-II of the M.V. Act under Section 163-A of the Act guidance of Rs. 15,000/- p.a. minimum for non-earning members to take to be read as Rs. 30,000/- p.a. for increase in the cost of living index and that amount itself comes to more than what the tribunal awarded otherwise.

12. Thus, the quantum is no way on high side to reduce, but for no cross-objections and with no power to the appellate Court to enhance, even it is the contention of the respondent-claimant to award more than what the tribunal awarded since entitled, that can be awarded irrespective of cross-objections, which in fact is untenable for the following settled position of law, vide decisions: 1) Ranjana Prakash and Others Vs. Divisional Manager and Another, where categorically held that but for to substantiate the quantum on one ground or other from impugning any findings in that regard or by interference by this Court within its appellate power under Order XLI Rule 33 CPC, the respondent to the appeal cannot ask for reducing or increasing the quantum in the absence of cross-objections or independent appeal; 2) Oriental Insurance Company Limited Vs. R. Swaminathan 2006 ACJ 1398 following the earlier expression of the Apex Court in Banarsi Vs. Ramphal in the same line; 3) in said Banarsi and Others Vs. Ram Phal, Pannalal Vs. State Bombay and Others, Rameshwar Prasad and Others Vs. Shyam Beharilal Jagannath and Others, , 6) Harihar Prasad Singh and Others Vs. Balmiki Prasad Singh and Others, holding that normally a party who is aggrieved by a decree should, if he seeks to escape from its operation, appeal against it within the time allowed after complying with the requirements of law. Where he fails to do so, no relief should ordinarily be given to him even under Order XLI Rule 33 CPC. But there are well recognized exceptions to this Rule. One is where as a result of interference in favour of the appellant, it becomes necessary to readjust the rights of other parties. A second class of cases based on the same principle is, where the question is one of settling mutual rights and obligations between the same parties. A third class of cases is when the relief prayed for is single and indivisible, but is claimed against a number of defendants. In such cases, if the suit is decreed and there is an appeal only by some of the defendants and if the relief is granted only to the appellants there is possibility that there might come into operation at the same time and with reference to the same subject matter two decrees which are inconsistent and contradictory. This, however, is not an exhaustive enumeration of the class of cases in which Courts would interfere under Order XLI Rule 33 of CPC. Such an enumeration neither be possible nor even desirable, 7) Nirmala Bala Ghose and Another Vs. Balai Chand Ghose and Others, , that Order XLI Rule 33 is undoubtedly expressed in terms which are wide

but it has to be applied with discretion, and to cases where interference in favour of appellant necessitates interference also with a decree which has by acceptance or acquiescence become final so as to enable the Court to adjust the rights of the parties. The Rule does not confer an unrestricted right to reopen decrees which have become final merely because the appellate Court does not agree with the opinion of the Court appealed from. By failure of the respondent to prefer appeal or to take cross-objections, the respondent has allowed that part of the trial Court''s decree to achieve a finality which was adverse to him. While dismissing the appeal, modifying the decree in favour of the appeal-respondent in the absence of cross-appeal or cross-objections is interference by the appellate Court that has reduced the appellant''s to a situation worse than in what they would have been if they had not been appealed. The High Court ought to have notice this position of law and should have interfered to correct the error of the law committed by the lower Court (appellate)) - in laying down the principle therefrom in Banarsi (supra) that in an appeal filed by the defendant laying challenge to the grant of a smaller relief, the plaintiff as a respondent cannot seek a higher relief if he had not filed an appeal on his own or had not taken any cross-objection and as such held by relying on it in R. Swaminathan supra that in the appeal filed by the insurer the claimant neither filed cross-objections nor appealed independently and thereby not entitled to claim more than what the tribunal awarded. Having regard to the above, any contention by the claimant of entitled to more than what the tribunal has awarded without cross-objections even the appeal of the opposite party ends in dismissal is untenable. The decision relied in this regard of Nagamuni Vs. APSRTC Civil Appeal No. 9214 of 2013 dt. 17.10.2013 of the Apex Court wherein by referring to single judge expression of Madras High Court of appellant Court can grant in favour of claimant without independent appeal or cross-objections, in the appeal filed by the insurer/insured impugning the tribunal''s award, while dismissing the appeal can enhance the compensation more than what tribunal awarded, cannot be given precedence, despite with utmost respect to the proposition, leave about the contention of the appellant herein of the above settled proposition had it been brought to the Court it could not held so and thereby that is not good law, in view of the above settled proposition of law and with reference to the factual matrix, that too, it is not a case of appeal by claimant/s, impugning the compensation awarded by the tribunal to say the tribunal''s award in any extent not finalised by virtue of the appeal and for entire matter at large for the appellate Court under Order XLI Rule 33 CPC to grant any compensation even more than claimed if it is just so to award from so arriving as criteria irrespective of the claim in a claim under Section 166 of M.V. Act, without succumbing to technicalities but for by directing to pay deficit Court Fees in such event if at all the Court Fees paid is less from the claim is less than entitled, vide-principle laid down in Nagappa, Ningamma and Rajesh supra.

13. Coming to the rate of interest, though the interest at 9% per annum is awarded by the Tribunal, from the settled proposition of law in Tamil Nadu State Transport

Corporation Ltd. Vs. S. Rajapriya and Others, and Sarla Varma (supra) by taking consideration of the steep fall in the bank rate of interest and also from the latest expression of the Apex Court in Rajesh (3 Judges bench supra), interest is awarded at 7 1/2% per annum by modifying and reducing from 9% per annum awarded by the Tribunal. Accordingly, Point-1 for consideration is answered.

POINT-2:

14. In the result, the appeal is dismissed with no costs. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.