

(2014) 04 AP CK 0097

Andhra Pradesh High Court

Case No: M.A.C.M.A. No. 173 of 2009

The National Insurance Co. Ltd.

APPELLANT

Vs

Mohd. Zakeer and Others

RESPONDENT

Date of Decision: April 15, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 33

Hon'ble Judges: U. Durga Prasad Rao, J

Bench: Single Bench

Advocate: A. Veera Swamy, Advocate for the Appellant; K. Jagathpal Reddy Counsel for Respondent Nos. 1 to 4, Advocate for the Respondent

Final Decision: Dismissed

Judgement

U. Durga Prasad Rao, J.

Challenging the award dated 20.07.2007 in O.P. No. 2326 of 2005 passed by the Chairman, M.A.C.T.-cum-X Additional Chief Judge, City Civil Court (Fast Track Court) at Hyderabad (for short "the Tribunal), the appellant/National Insurance Company Limited preferred the instant appeal.

2. The factual matrix of the case is thus:

a) The claimants 1 to 4 are father, mother and sisters of the deceased--Mohd. Shakeer. Their case is that on 31.07.2005 at about 4:30 p.m., when the deceased along with his friend was proceeding on Hero Honda motorcycle bearing No. AP 11 Q 5093 from Hyderabad to JP Dargah and when they reached near IOC petrol pump Timapur, one lorry bearing No. KA 07 3786 being driven by its driver at high speed and in a rash and negligent manner and dashed to the said bike from behind due to which they fell down and the said lorry ran over the deceased and he received crush injury, head injury and other multiple fractures and then immediately he was shifted to Osmania General Hospital and he died while taking treatment. It is averred that the accident was occurred only due to the rash and negligent driving by the driver of

the offending lorry. It is pleaded that the deceased was furniture carpenter and doing business under the name of Zakeer Furniture Works and used to earn Rs. 5,000/- p.m. It is further pleaded that due to sudden demise of the deceased, they lost their breadwinner. On these pleas, the claimants filed O.P. No. 2326 of 2005 against respondents 1 and 2, who are the owner and insurer of the offending lorry and claimed Rs. 3,00,000/- as compensation under different heads mentioned in the O.P.

b) Respondent No. 1 remained ex parte.

c) Respondent No. 2/Insurance Company filed counter and opposed the material averments in the petition and urged to put the claimants in strict proof of the same. R.2 contended that the deceased who was riding the motorcycle drove the vehicle without following the traffic rules and failed to avert the accident. R.2 denied the age, avocation and income of the deceased and contended that the claim under several heads is highly excessive and untenable. Thus, R.2 prayed for dismissal of the O.P.

d) During trial P.Ws. 1 to 3 were examined and Exs. A.1 to A.7 were marked on behalf of claimants. Policy copy filed by 2nd respondent was marked as Ex. B.1.

e) A perusal of the award would show that the Tribunal having regard to the evidence of PW. 2-eye witness coupled with Ex. A.1--F.I.R., Ex. A.2--charge sheet and Ex. A.3--inquest report held that the accident was occurred due to rash and negligent driving of the driver of the offending lorry.

f) Issue No. 2 which relates to quantum of compensation is concerned, the Tribunal did not agree with the contention of the claimants that the deceased was earning Rs. 5,000/- p.m. The Tribunal fixed notional income of the deceased at Rs. 3,000/- p.m. and deducted Rs. 400/- towards his expenses and assessed Rs. 1,732/- (Rs. 2600/- X 2/3) as loss to the claimants and multiplied the said amount with multiplier "15" selected on the basis of age of the father and mother which was 50 and 45 years. Thus, the Tribunal arrived the loss of earnings of the deceased at Rs. 3,11,760/- (20,784/- x 15). In addition to that, it also granted Rs. 2,000/- towards funeral expenses and Rs. 6,000/- towards loss of estate.

g) Thus the Tribunal granted total compensation of Rs. 3,19,760/- to the claimants with interest @ 6% p.a. from the date of petition till the date of realization.

Hence, the appeal by the insurance company.

3. Heard arguments of Sri A. Veera Swamy, learned counsel for appellant/Insurance Company and Sri K. Jagathpal Reddy, learned counsel for respondent Nos. 1 to 4/claimants. Notice to the R. 5 was returned with an endorsement "addressee deceased".

4a) Criticizing the award, learned counsel for the appellant/insurance company, firstly argued the Tribunal erred in granting more compensation than prayed for by the claimants. Expatiating it, he argued that the Tribunal granted Rs. 3,19,760/- as against the claim of Rs. 3,00,000/-, which is unjust and unreasonable.

b) Secondly, learned counsel further argued that in view of the judgment of the Supreme Court reported in [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,](#), 50% of the earnings of the deceased have to be deducted while computing the compensation for loss of dependency, since the deceased was a bachelor by the time of his death.

c) Thirdly, learned counsel further argued that the Tribunal ought not to have taken the monthly earnings of the deceased @ Rs. 3,000/- per month, instead his earnings should have been taken as Rs. 15,000/- per annum following the Second Schedule of the Motor Vehicles Act.

Thus, he prayed to revise the compensation by allowing the appeal.

5a) Per contra, while supporting the award, learned counsel for the respondents 1 to 4/claimants firstly, submitted that the award was just and reasonable and there is no need to interfere with the same.

b) Secondly, he argued that in fact, the Tribunal ought to have granted more compensation than awarded. Expatiating it, learned counsel submitted that as per the decision reported in [N. Surender Rao and Others Vs. B. Swamy and Another,](#), the age of the deceased should have been taken for selection of multiplier, instead the age of his parents. Learned counsel prayed that the compensation for loss of dependency may be computed by following the said decision.

c) Thirdly, learned counsel argued that in view of the recent decision of the Supreme Court reported in [Rajesh and Others Vs. Rajbir Singh and Others,](#), the compensation under the head funeral expenses need to be revised, since the trial Court granted only a paltry sum of Rs. 2,000/-. He further submitted that the compensation under the head loss of estate is also to be revised, since the Tribunal granted only a meager amount under the said head also.

Thus, while supporting the award on one side, learned Counsel prayed that compensation need to be enhanced.

6. In view of the above rival arguments, the point for determination in this appeal is:

whether the compensation awarded by the Tribunal is just and reasonable and needs any enhancement?

7. POINT: The accident, involvement of the motor cycle bearing No. AP 11 Q 5093 and offending lorry bearing No. KA 09 3786 and death of the deceased are all admitted facts and not challenged in this appeal. Hence, the only point for determination in this appeal is, whether compensation awarded by the Tribunal is

just and reasonable or not.

8. The first and foremost argument of the appellant/insurance company is that the Tribunal erred in granting more compensation than prayed for, since the claim was only for Rs. 3,00,000/- and award was Rs. 3,19,760/-. This argument does not hold water, in view of the fact that the Tribunal followed the decision reported in [Nagappa Vs. Gurudayal Singh and Others,](#) on the point that in fit cases more compensation than claimed can be awarded. Hence, the Tribunal cannot be found fault for granting more compensation than prayed for. Of course, I must hasten and say that the appellant has every right to criticize in the appeal that the amount awarded is not just and reasonable. For clarity, it must be said that the Tribunal has every right to grant more compensation than prayed for in fit cases, but at the same time, the aggrieved has every right to challenge the correctness of the said award. Hence, it has now to be seen whether the Tribunal was right in granting Rs. 3,19,760/-.

9. The deceased-Shakeer was aged 20 years by the date of accident and he was a carpenter by profession. In the evidence of PWs. 1 and 3, it was projected that he was running furniture shop in the name of Zakeer Furniture Works at Zohra bee, Talab Katta and was earning Rs. 5,000/- per month. Besides, he was supplying furniture to Royal Furniture Works, Aman Nagar and earning Rs. 5,000/-. It was projected that the deceased was contributing around Rs. 5,000/- per month to his family. PW3-Mohd. Ashraf, a worker in Royal Furniture Works deposed that the deceased was supplying furniture to Royal Furniture Works and was getting Rs. 5,000/- per month. He stated that Ex. A7--salary certificate was issued by the owner of Royal Furniture Works. The above is the evidence adduced on behalf of the claimants in respect of the nature of occupation and earnings of the deceased. However, the Tribunal did not accept the said evidence on the observation that there is no evidence to show that PW3 was working in Royal Furniture Works and that the deceased was supplying furniture to the said shop. The Tribunal observed that the author of Ex. A7 was not examined. On the above observations, the Tribunal declined to accept Ex. A7--salary certificate. However, considering the age and avocation, the Tribunal fixed the notional income of the deceased at Rs. 3,000/- per month.

10. Now in the appeal, it is argued that the Tribunal erred in fixing the notional income of the deceased @ Rs. 3,000/- per month. However, I am unable to accept the said argument, because the deceased was a young boy and a carpenter by profession and therefore, earning Rs. 100/- per day is not impossible.

11. Having taken the monthly income of the deceased @ Rs. 3,000/- per month, now it has to be seen, what could be the loss of dependency to his family. The annual income of the deceased comes to Rs. 36,000/- (Rs. 3,000/- x 12 months) and a suitable multiplier has to be selected now. The Tribunal has taken the multiplier "15" basing on the age of his parents. However, in view of the cited decision in N.

Surender Rao's case (2 supra), the age of the deceased should be taken into consideration, instead of the age of the parents for fixing the multiplier. The deceased was aged 20 years and his age was consistently mentioned so in claim petition as well as in Ex. A4--inquest report and Ex. A5--post mortem examination report. So, his age can be accepted as 20 years. In Sarla Verma's case (1 supra), the multiplier "18" is prescribed for the deceased in the age group of 15 to 20 years. So, the said multiplier is accepted for computation. In the same Sarla Verma's case (1 supra) it is laid down that 50% of the income should be deducted towards personal expenses of the deceased, when he happened to be a bachelor. Following the said decision, 50% has to be deducted and in which case, the claimants would be entitled to Rs. 3,24,000/- (Rs. 3,000/- p.m. X 12 months X "18" multiplier X 50%), as compensation towards loss of dependency.

12. Now the argument of the learned counsel for the respondents has to be looked into. According to him, the claimants are entitled to more compensation than awarded under the heads funeral expenses and loss of estate etc. According to him, as per the decision reported in Rajesh's case (supra), the claimants are entitled to Rs. 25,000/- towards funeral expenses. If his argument has to be approved, the compensation to the claimants comes to Rs. 3,55,000/- (Rs. 3,24,000/- towards loss of dependency, Rs. 25,000/- towards funeral expenses and Rs. 6,000/- towards loss of estate).

13. Here the question is, whether the claimants without preferring an appeal for enhancement of compensation, can claim enhancement of compensation. In this regard, in the recent decision reported in [Aitipamula Kalavathi @ Kalamma Vs. M/s. Southern road Ways Ltd. and United India Insurance Co. Ltd.,](#), a learned single Judge of this Court relying on the decisions reported in Oriental Insurance Company Vs. R. Swaminathan 2006 ACJ 1398 and [Ranjana Prakash and Others Vs. Divisional Manager and Another,](#), held that compensation amount cannot be increased beyond the amount awarded by the Tribunal in the appeal filed by the insurance company. It was held that even under Order 41 Rule 33 of Code of Civil Procedure, the Appellate Court cannot grant larger or higher relief than claimed. It must be mentioned here that in another decision reported in [National Insurance Co. Ltd. Vs. Saheb @ Gadivan Saheb and Another,](#), another learned single Judge of this Court also expressed similar view stating that prayer for enhancement of compensation cannot be accepted when the claimant has not preferred appeal challenging the adequacy of compensation.

14. Coming to the present case, admittedly the claimants have not preferred any appeal and on the other hand, the insurance company has only preferred the appeal questioning the quantum of compensation. In view of the above citations, compensation cannot be enhanced more than what was awarded by the Tribunal.

15. In the result, this appeal is dismissed. However, no order as to costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.