

Andhra Pradesh High Court - Amravati

Garlapati Kutumba Rao, Guntur. ... vs Jr Sudheen Sudheer, Karnataka ... on 10 May, 2023

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

AND

THE HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

M.A.C.M.A.No.994 of 2009

JUDGEMENT: (Per Hon'ble Sri Justice V.Gopala Krishna Rao)

The appellants are the claimants in M.V.O.P.No.219 of 2005 on the file of the Motor Accident Claims Tribunal-cum-II Additional District Judge, Guntur and they filed the appeal for enhancement of compensation awarded by the Tribunal.

2. Both the parties in the appeal will be referred to as they are arrayed in the claim application.

3. The claimants filed a claim petition under Sections 166 and 140 of the Motor Vehicles Act, 1988 against the respondents praying the Tribunal to award an amount of Rs.90,60,000/- towards compensation for the death of their unmarried son namely Garlapati Narasimha Rao, in a motor vehicle accident that occurred on 01/02.10.2004.

4. Facts

germane to dispose of this appeal may be briefly stated as follows:

The petitioners are the parents of the deceased. On the intervening night of 01/02.10.2004, the deceased was travelling in CMR, J & VGKR, J MACMA No.994 of 2009 the Maxi Tempo bearing No.KA 05 AE 3066 from Bangalore to go to Hasan, on the way, at about 2.00 a.m. when the vehicle reached near Hombalakoppa Gate, NH-48 BM road, the driver of the lorry bearing No.MYE 6685 drove the same in a rash and negligent manner in high speed and dashed the tempo and then dashed another Maruti car. In that accident, the deceased G.Narasimharao and one Srinivas sustained grievous injuries and died on the spot.

5. The third respondent was set ex parte.

6. The respondents 1, 2 and 4 filed written statements and denied the allegations made by the claim petitioners in the petition and pleaded that the claim petitioners are not entitled to any compensation from the respondents 1, 2 and 4.

7. Based on the above pleadings, the Tribunal framed the following issues for trial:

1. Whether the accident occurred due to rash and negligent driving of the driver of Lorry bearing No.MYE 6685 and tempo traveler No.KA 05 AE 3066?

CMR, J & VGKR, J MACMA No.994 of 2009

2. To what compensation the petitioners are entitled and from whom?

3. To what relief?

8. During the course of enquiry in the claim petition, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A.1 to A.21 and Ex.X1 were marked. On behalf of respondents RW1 was examined and Ex.B1 and Ex.B2 were marked.

9. At the culmination of the enquiry, after considering the evidence on record and on appreciation of the same, the Tribunal allowed the petition in-part and awarded a sum of Rs.1,65,000/- towards compensation to the claim petitioners. Being aggrieved by the impugned award, the appellants filed this appeal for enhancement of compensation.

10. Heard learned counsels for both the parties.

11. Now, the points for determination are:

1) Whether the appellants are entitled for enhancement of compensation as prayed for?

2) Whether the order passed by the Tribunal needs any interference? If so, to what extent?

CMR, J & VGKR, J MACMA No.994 of 2009

12. POINT Nos.1 and 2 : The Tribunal on considering the evidence of PW3, Ex.A1 CC of final report, Ex.A17 CC of FIR, Ex.A18 and Ex.A21 CC of MVI report, came to a conclusion that the accident in question is the result of rash and negligent driving of the driver of the offending vehicle i.e., lorry bearing No.MYE 6685. The said finding is not challenged by the respondents.

Therefore, we do not find any legal flaw or infirmity in the said finding recorded by the Tribunal.

13. The petitioners are none other than the parents of the deceased, who died in the road accident. The deceased was bachelor by the date of accident. The respondents are not denying the relationship and also the fact that the deceased was working as a software employee in Teja's network India Limited, Bangalore. In order to prove the income of the deceased, the claimants relied on the evidence of PW2. Ex.A15 salary certificate of the deceased was marked through PW1 and it also confronted to PW2, who is working as a financial controller in Teja's Network India Limited, Bangalore. As per Ex.A15 salary certificate of the deceased, the gross monthly salary of the deceased was Rs.33,750/-. The Tribunal ignored Ex.A15 salary certificate and committed patent error and arrived to contribution CMR, J & VGKR, J MACMA No.994 of 2009 of monthly income of the deceased towards dependents at Rs.10,000/- and committed a grave error. Therefore, the said finding is liable to be set aside.

14. As per Ex.A15 salary certificate of the deceased, the deceased was drawing salary of Rs.33,750/- per month as on 01.10.2004 and his last designation was R&D Engineer. The accident occurred at 2.00 a.m. on 2.10.2004, therefore, Ex.A15 is relevant to decide the monthly income of the deceased. As per Ex.A15 after excluding Public Provident Fund, which was included in his income, the income of the deceased was Rs.31,950/-. The conveyance allowance of Rs.800/-, telephone allowance of 1500/- and special allowance of Rs.8,650/- cannot be included in the income of the deceased and the same cannot be considered as a pay of the deceased. Therefore, from out of Rs.31,950/- an amount of Rs.10,950/- has to be deducted, therefore, monthly income of the deceased is arrived at Rs.21,000/- and his annual income was Rs.2,52,000/-. As per the case of the petitioners, the deceased was aged about 25 years by the date of the accident. As per the decision of the Hon'ble Supreme Court of India in National Insurance Company CMR, J & VGKR, J MACMA No.994 of 2009 Limited Vs. Pranay- Sethi, 40% of the income has to be added since the deceased was not a Government employee i.e., Rs.2,52,000/- + Rs.1,00,800/- = Rs.3,52,800/-.

15. Since the deceased was a bachelor, 50% of income from out of the annual income has to be deducted towards personal expenses of the deceased. As such after deducting 50% of the income towards personal expenses of the deceased, the annual contribution to the family is arrived at Rs.1,76,400 (Rs.3,52,800/- - Rs.1,76,400/-). The material on record shows that the deceased was aged about 25 years at the time of accident. So the relevant multiplier applicable to the age group of the deceased is '18', as per the judgment of the Hon'ble Supreme Court in Sarla Varma Vs. Delhi Transport Corporation² and the loss of dependency comes to Rs.31,75,200/- (Rs.1,76,400/- x 18) and an amount of Rs.10,000/- is awarded towards funeral expenses of the deceased and amount of Rs.60,000/- is awarded towards loss of estate. In total an amount of Rs.32,45,200/- is awarded towards total compensation to the claimants.

2017 (16) SCC 680 2009 (4) SCJ 91 CMR, J & VGKR, J MACMA No.994 of 2009

16. The Tribunal awarded interest @7.5% p.a. on the total compensation from the date of filing of the petition till the date of payment of amount by R1 and R2. The interest awarded by the Tribunal at 7.5% p.a. on total compensation is quite reasonable. There is no dispute regarding the fact that

the crime vehicle is insured with R2 Insurance Company by the first respondent and the policy is also in force by the date of accident. The driving licence of driver of offending vehicle is also in force by the date of accident. No other legal evidence was adduced by the respondents to establish that the terms of the policy were violated by the owner of the offending vehicle. Therefore, the respondents 1 and 2 are liable to pay total compensation to the claim petitioners.

17. In the result, this appeal is partly allowed by enhancing the compensation granted by the Tribunal. The claimants are entitled to an amount of, Rs.32,45,200/- towards total compensation with interest thereon @7.5% p.a. The respondents 1 and 2 are directed to deposit the remaining compensation amount within two months from the date of this judgment. On such deposit, the claimant No.1, father of the deceased is entitled to withdraw an amount of Rs.10,00,000/- and claimant No.2, mother of the CMR, J & VGKR, J MACMA No.994 of 2009 deceased is entitled to withdraw an amount of Rs.22,45,200/- along with total costs and interest thereon. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the appeal shall stand closed.

----- JUSTICE CHEEKATI
MANAVENDRANATH ROY ----- JUSTICE V.GOPALA
KRISHNA RAO 10th May, 2023 sj CMR, J & VGKR, J MACMA No.994 of 2009 THE HON'BLE SRI
JUSTICE CHEEKATI MANAVENDRANATH ROY AND THE HON'BLE SRI JUSTICE V.GOPALA
KRISHNA RAO M.A.C.M.A.No.994 of 2009 10th May, 2023 sj