

A.Maddaiah and Others Vs. Viswanath and Another

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Court : Andhra Pradesh

Decided On : Oct-18-2012

Judge : B.Chandra Kumar

Appellant : A.Maddaiah and Others

Respondent : Viswanath and Another

Judgement :

THE HONOURABLE SRI JUSTICE B.CHANDRA KUMAR CIVIL
MISCELLANEOUS APPEAL No.4659 o

18. 10.2012 A.Maddaiah and others Viswanath and another Counsel for the
petitioners: A.Jaysankara Reddy Counsel for the Respondent: N.S.Bhaskara Rao :
: Cases Referred:

1. 2012 (5) ALD 3.2. (2009) 6 Supreme Court Cases 121

JUDGMENT

:- The only point that arises for consideration in this appeal is whether the major
sons can be treated as legal representatives and are entitled for compensation for
the death of their mother, who died in a motor accident.

2. The appellants herein, who are the sons of deceased Thimmamma filed a claim
petition claiming a total compensation of Rs.1,70,000/-. The I Additional District
Judge - cum - Motor Accidents Claims Tribunal, Kurnool (hereafter, 'the Tribunal'),

by its order dated 16.10.2003 in MVOP No.892 of 2002, though assessed the total compensation at Rs.1,30,000/-, but awarded only Rs.22,500/- as compensation under the heads of loss of love and affection, loss of estate, funeral expenses and transportation charges.

3. The brief facts of the case are that on 11.05.2002 at about 03:30 p.m., the deceased Thimmamma and others were sitting near a hotel of one Madiga Gorlagutta Erranna at Maddiletiswamy temple. At about 03:30 p.m., the offending lorry bearing registration not AP 2.T 221 coming from R.S.Rangapuram being driven by its driver in a rash and negligent manner and at high speed dashed against the deceased and the others and further rammed into the hotel and cool-drink shop of one J.Abdul Rasool. As a result of this accident, the deceased Thimmamma died on the spot and others sustained injuries. According to the claimants, the deceased was aged 50 years as on the date of the accident and was earning Rs.70/- per day by doing coolie work in the quarries of Rangapuram and that they have lost the earnings of the deceased.

4. The first respondent - owner of the offending vehicle, remained ex parte. The second respondent - Insurance Company with which the lorry was insured, contested the matter and filed counter denying the material averments made by the claimants.

5. Basing on the pleadings, the Tribunal framed following issues.

1. 1. Whether the accident occurred due to rash and negligent driving of the driver of the lorry bearing No. AP-22-T-2218? 2. 2. Whether the petitioners are entitled for compensation and if so, what amount and from which of the respondent? 3. To what relief? 6. On issue No.1, the Tribunal came to conclusion that the accident occurred due to rash and negligent driving of the driver of the lorry. The said finding is not in dispute in this appeal. On issue No.2, the Tribunal has taken the income of the deceased at Rs.15,000/- per annum and after deducting 1/3rd towards her personal expenditure, assessed the loss of earnings of the deceased, i.e., loss of her contribution to the family at Rs.10,000/- per month and by applying multiplier of 13, assessed the loss of earnings at Rs.1,30,000/-. However, the Tribunal observed that the claimants are major sons of the deceased and hence,

they cannot be said to be dependants on the deceased. The Tribunal, however, opined that the claimants can earn for their livelihood. The Tribunal further awarded an amount of Rs.5,000/- towards loss of love and affection and Rs.12,500/- towards loss of estate and Rs.3,000/- towards funeral expenses and Rs.2,000/- towards transportation charges.

7. Learned counsel for the appellant, relying on the judgment of the Apex court in the case between Santosh Devi Vs. National Insurance Company Limited and others¹, submitted that merely because the sons are major sons, it cannot be said that they have no longer be regarded as dependents on the deceased.

8. The application for compensation arising out of an accident lies under Section 166 of the Motor Vehicles Act, 1988 (hereafter, 'the Act'), which reads thus:- 166. Application for compensation:- (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made:- a) by the person who has sustained the injury; or b) by the owner of the property; or c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or d) (d) by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased, as the case may be.

9. Thus, it is clear that the legal representatives of the deceased can make a claim under Section 166 of the Act. Merely because the legal representatives of the deceased have some other income or that they are not dependants on the income of the deceased, it cannot be said that they cannot make any application under Section 166 of the Act. Of course, the contribution of the deceased may be assessed basing on the independent income of the claimants.

10. In the instant case, the first claimant is examined as P.W.1. No suggestion has been given to P.w.1 that he is not the legal representative of the deceased. The only suggestion given to this witness is that the deceased was aged more than 60 years and that she was not earning. P.W.1 denied the said suggestion. P.W.2 is the eye witness to the accident who deposed about the accident. In view of the above discussion, I hold that the legal representatives of the deceased are entitled for compensation and also for the loss of future earnings of the deceased.

11. Accordingly, I hold that the claimants are entitled to the compensation assessed by the Tribunal. As regards the other heads, as per the judgment of the Apex Court in the case between Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another², the claimants are entitled to a total sum of Rs.15,000/-. Thus, the claimants are entitled for a total compensation of Rs.1,45,000/- (Rs.1,30,000/- + Rs.15,000/-). The claimants are entitled for equal shares out of the total compensation. The enhanced compensation shall carry interest at the rate of 6% per annum.

12. The appeal is, accordingly, allowed in part. There shall be no order as to costs.

Justice B.Chandra Kumar 18th October, 2012

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