

G. Venkatesham Vs. the General Manager,

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Court : Andhra Pradesh

Decided On : Jun-16-1977

Reported in : AIR1978AP285

Judge : S.H. Sheth and ;Jeevan Reddy, JJ.

Acts : [Fatal Accidents Act, 1855](#) - Sections 1-A and 3

Appeal No. : A.A.O. No. 140 of 1975

Appellant : G. Venkatesham

Respondent : The General Manager, ;andhra Pradesh State Road Transport Corporation, Musheerabad

Advocate for Def. : C. Ananda Rao, Standing Counsel

Advocate for Pet/Ap. : R. Sriramulu, Adv.

Judgement :

S.H. Sheth, J.

1. This appeal has been filed against an award made by the learned Addl. Chief judge, City Civil Court, Secunderabad acting as the Motor Accident Claims Tribunal. By his award, the Tribunal has granted to the claimant compensation of Rs. 10,000/-

2. The facts of the case, briefly stated, are as under. The claimant's wife who was 21 years old died in an accident which was caused by the Andhra Pradesh State Road Transport Corporation on 15-1-1972 in the outskirts of the City of Hyderabad. The claimant-the husband of the deceased made a claim for Rs. 1,00,000/- under S. 110A of the Motor Vehicles Act. 1964 against the Corporation. The Tribunal awarded him a sum of Rs. 10,000/- Having been aggrieved by that award, the claimant has filed this appeal.

3. By the impugned award the Corporation was also aggrieved. Therefore, the Corporation filed in this Court C. M. A. No. 31/75. It was dismissed by Mr. Justice Madhusudan Rao on 27-2-1976. It has been held in that decision that the accident was caused by the negligence of the Driver of the Corporation bus APZ 4955. He also held that the compensation of Rs. 10,000 which the Tribunal awarded to the claimant was not more. He recorded that finding because the Corporation contended that the compensation of Rs. 10,000/- awarded to the claimant by the Tribunal was more than it should have been awarded. The two findings recorded by the learned judge are binding on this Court. It is therefore not open to the Corporation in this Appeal to contend that the accident was not caused by the negligence of the Driver of the Corporation nor is it open to the Corporation to contend that the compensation awarded is more than it should have been awarded.

4. The claimant in this appeal contends that the Tribunal has awarded much less compensation than could be justified by the facts and circumstances of the case. Before we consider on merits this contention raised on behalf of the claimant, it is necessary to note certain conspicuous omissions in his petition. The deceased left behind her surviving, her husband, the claimant, and two children ---- (1) One 3 years old and (2) another 20 months old. The claim ought to have been made not only on behalf of the husband but on behalf of the two minor children also. The claim petition was filed only by the husband. Before a claim is made under S. 110-A of the Motor Vehicles Act, it is always necessary to bear in mind the provision of S. 1-A of the Fatal Accidents Act, 1955. It specified the claimants who can make a claim arising out of the death of a person caused by a fatal accident. Section 1-A inter alia provides that every action or suit for a wrongful act shall be for the

benefit of the wife, husband, parents and child, if any, of the person whose death has been caused and shall be brought by and in the name of the executor, administrator or representative of the person deceased. It is clear therefore that where a woman is killed in a fatal accident, the claim can be made by her husband, children and parents. This is the special provision which has been made under the Fatal Accidents Act 1855 and it is necessary to bear in mind this provision while filing a claim petition under S. 110-A of the Motor Vehicles Act. In the instant case it is on record that the deceased left, amongst others, two children surviving her. It was necessary, therefore, for the claimant not only to make the claim on his own behalf but also on behalf of the two minor children whom the deceased has left surviving her.

5. The second characteristic omission which we find in this petition is that the claimant has made a bald claim of Rs. 1,00,000/- without stating in the petition or in an annexure to the petition how he has arrived at the figure of Rs. 1,00,000/-. It is always necessary to specify different heads under which damages or compensation is claimed. A bald claim of a lakh of rupees or more or less does not help the claimant in establishing his claim satisfactorily. The claim petition must contain all necessary details showing how the claim has been arrived at and on what basis.

6. The third characteristic omission with which we have come across in this case is that when the claimant deposed before the Tribunal that he claimed a sum of one lakh of rupees, for compensation, he did not state under what heads and on what basis he was making the claim of Rs. 1,00,000/-. All that he stated in that behalf was that consequent upon the death of his wife he had engaged an Ayah to whom he was paying a sum of Rs. 50/- per month in addition to making provision for her food and clothing. This is not a satisfactory way of providing the claim which a claimant makes. He must show in his evidence what loss he has suffered on account of the accidental death of the deceased and how he arrives at the figure of compensation which he claims from the wrong doer. In the absence of any evidence, all that we can do in the instant case is to take into account only the indisputable heads for computing compensation payable to the claimant.

7. The judgement written by the Tribunal is also not at all satisfactory. The Tribunal appeal to have applied the rule of thumb and fix compensation at Rs. 10,000/- in full satisfaction of the claim which the claimant made. How and on what basis the compensation of Rs. 10,000/- has been computed has not been stated by the Tribunal in its judgement. It is always necessary for a Motor Accident Claims Tribunal to follow certain principles and to compute the compensation on the basis of those principles. Unless the compensation which a Tribunal awards, can be justified in the light of some rational principles it becomes an arbitrary award which cannot be ordinarily upheld. We may state in this behalf that the principles on the basis of which the compensation can be computed in a claim petition filed under Motor Vehicles Act have been laid down by the Gujarat High Court in *Hirji Virji Transport v. Basiranbibi* (1971-12 Guj LR 783). It was necessary for the learned advocates who appeared for the claimant and the Corporation to bring to the notice of the Tribunal the principles laid down by the Gujarat High Court in the aforesaid decision. It was also necessary for the Tribunal to notice them. Wherever these principles are applicable and wherever they can be suitably applied, they in our opinion, should be applied, because they have been laid down after an exhaustive consideration of several decisions, English and Indian, on the point. The Motor Accidents Claims Tribunals in this State would do better if they apply their mind to the principles laid down in that decision and invoked which determining the compensation payable to a claimant.

8. We may also draw the attention of the Tribunals to the Bench decision of this Court in *K. Narayana Reddiar v. P. Venugopala Reddiar* : AIR 1976 AP184 . In that decision this Court has considered how the compensation payable to a claimant in a petition under the Motor Vehicles Act should be computed.

9. So far as the instant case is concerned, in the absence of any evidence to show under what heads the compensation should be award to the claimant, we can take only such heads as are indisputable. The evidence shows that the deceased had not been earning anything. She had been running the house-hold and looking after her children. Therefore we have to evaluate her services rendered to her family and to her house-hold. The first head under which compensation should be awarded to the claimant is loss of domestic services which the deceased used to

render. This would include the service which she rendered by cooking the food for the family, by maintaining the house-hold and by bringing up the children. Though there is nothing in the evidence Mr. R. Sriramulu the learned counsel appearing for the claimant has made a claim under this head, in a statement filed before us, at the rate of Rs. 3/- per day. While evaluating the services in monetary terms which the deceased used to render, we must bear in mind the income of the claimant-the deceased's husband. The evidence shows that he has been working as a Technician in Hindustan Aeronautics Ltd., drawing salary of Rs. 400/- per month. If the claimant has been earning Rs. 400/- per month, the value of the services rendered by the deceased to the household cannot be valued at more than Rs. 150/- per month. Out of this amount we have to deduct what the claimant used to spend on the deceased and what he has been saving now on account of her death. Generally speaking what the claimant would be saving in his expenditure on account of the loss of his wife would be Rs. 100/- per month. We determine this figure after taking into account the size of his family consisting of the claimant, his deceased wife and his two minor children and his monthly income. However, out of Rupees 150/- at which we have evaluated the services of the deceased under the aforesaid head, we cannot deduct Rs. 100/- as the saving by the claimant on account of the loss of his wife because the evidence shows that he has engaged on Ayah to look after his two infant children. The evidence also shows that he has been spending Rs. 50/- per month on the Ayah besides providing her food and clothing. Therefore the sum of Rs. 100/- per month which the claimant has been saving on account of the loss of his wife must be reduced by Rs. 50/- which he has been spending on Ayah. We are ignoring the expenditure on food and clothing of the Ayah. Therefore the saving which the claimant makes on account of the death of his wife is to be reduced by what he is now required to spend on the Ayah viz., Rs. 50/- per month. The figures of Rs. 150/- at which we have evaluated the services of the deceased would have therefore to be reduced by this amount of Rs.50/-. The net result therefore is that the loss of services rendered by the deceased must be valued at Rs. 100/- per month. It would mean that there is loss of Rs. 1,200/- per year.

10. The deceased was an young lady of 21 years supposed to live for a pretty long time. She unfortunately met with the accidental death in the prime of her youth.

The claimant has made a claim on the basis that she would have lived for 39 years more. There is no rational basis for his assumption. All that we can do is to take into account an appropriate multiplier or a years' purchase factor and multiply it by the amount of annual compensation which we have computed. This principle has been very well explained by the High Court of Gujarat in the decision to which we have referred. What would have been the normal expectation of life for the deceased cannot be taken into account because if the deceased would have lived, say, for 40 years, the claimant would have enjoyed her services from month to month or year to year while we would be granting him compensation in a lump sum which, when invested, would bear interest or produce return. Therefore when the Court grants compensation in a lump sum at a time, the court has got to fix an appropriate multiplier or a years' purchase factor in order to see that the claimant ultimately gets a just amount for the loss of the services of the deceased. In case of a young woman such as the deceased, we think that compensation under this head should be granted to the claimant on the basis of 15 years' purchase factor. The annual figure works out at Rs. 18,000/-.

11. The next head under which compensation can be granted in a lump sum to the claimant is pain and suffering, funeral expenses, loss of love and affection to the children and loss of love and consortium to the husband. Normally for pain and suffering and funeral expenses, the Court grants a sum of Rs, 3,000/-. In the instant case there are two more additional factors viz., loss of consortium to the claimant-husband and loss of love and affection to the two young children who during their infancy have been deprived of the motherly affection. These factors have also got to be evaluated in the context of the status which the claimant enjoys in society and in the context of the income which he has been earning. In the case of *K. Narayana Reddiar v. P. Venygopala Reddiar* : AIR 1976 AP184 (supra), a Bench of this Court fixed a sum of Rs. 4,000/- for loss of consortium. The woman who was killed by accident in that case was a 50 years old woman. In the instant case the deceased was a 21 years old young woman. We cannot raise the figure by arithmetical progression. But we think that taking into account the age of the deceased and the income of her husband, under this consolidated head, we should award to the claimant a sum of Rupees 6,000/-. Therefore, the total figure which works out is Rs. 24,000/- to which the claimant will be entitled.

12. Testing this figure from another angle we find that if the claimant invests this sum of Rs. 18,000/- which we have awarded to him on the 15 years' purchase factor the return which he would get per year at the rate of 9% per annum would be Rs. 1,620/-. It would work out at Rs. 135/- per month. Now the evidence shows that the claimant has been spending Rs. 50/- per month on the Ayah besides providing her food and clothing. The total cost on the Ayah can therefore be justified determined at Rs. 100/- per month. So far as the loss of services of the deceased to the claimant and to the household is concerned we have computed it at Rs. 100/- per month. As against the total loss of Rs. 200/- a month he would be getting a sum of Rs. 135/- per month. Therefore, he would be spending Rs. 65/- per month more than the return he earns on the sum of Rs. 18,000/-. Therefore, the corpus of Rs. 18,000/- would be exhausted at the end of 23 years. The deceased, a young woman of 21 years of age, would have certainly lived at least for 23 years more. Therefore, the amount awarded by us to the claimant is firstly commensurate with the recurring loss which he has been suffering on account of the premature death of his young wife and secondly it is such as would be exhausted before the normal span of the life of the deceased would have come to an end. Therefore, the sum of Rs. 24,000/- which we have awarded to the claimant is fair and just.

13. In the result we allow the appeal, modify the award made by the Tribunal and order Andhra Pradesh State Road Transport Corporation to pay to the claimant a sum of Rs. 24,000/- by way of compensation for the accidental death of his wife. The amount shall be paid to the claimant not only for his own benefit but also for the benefit of the two minor children of the deceased. The additional amount which we have awarded shall bear interest at the rate of 6% per annum from the date of this award until payment. The costs of this appeal shall be paid by the respondent-Corporation to the appellant. Advocate's fee shall be computed on the claim which we have decreed. The Tribunal shall take appropriate steps to safeguard the interests of the two minor children before paying the amount to the claimant.

14. Appeal allowed.