

The Depot Manager, Apsrtc and anr. Vs. Alvala Krishna Mrunalini and ors.

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Court : Andhra Pradesh

Decided On : Oct-30-1996

Reported in : 1997(1)ALT282

Judge : B.K. Somasekhara, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 110A

Appeal No. : C.M.A. No. 1276 of 1990 and Cross-objections

Appellant : The Depot Manager, Apsrtc and anr.

Respondent : Alvala Krishna Mrunalini and ors.

Advocate for Def. : E.S. Ramachandra Murthy, Adv.

Advocate for Pet/Ap. : Krishna Adv. for ;A. Vyjayanthi, SC

Disposition : Appeal dismissed

Judgement :

B.K. Somasekhara, J.

1. This is the respondents' appeal as against the award of the Motor Accidents Claims Tribunal-cum-District Judge, Khammam in O.P. No. 160 of 1989 dated 19-3-1990 questioning the alleged excessive amount of compensation awarded by the Motor Accidents Claims Tribunal, Khammam. The claimants have filed the

Cross-Objections, inter alia, contending that the amount of compensation so awarded is inadequate. The two aspects involving the common questions have been considered together for the purpose of convenience.

2. A claim petition Under Section 110-A of the [Motor Vehicles Act, 1939](#) (for short 'the Act') was laid by the claimants who are the wife and children of the deceased Venkateswar Rao, an advocate practising at Sathupalli to recover Rs. 4,00,000/- due to the death in the motor vehicle accident on 14-1-1989 said to be due to the rash and negligent driving of the bus No. AEZ 2956 by the driver, respondent No. 1. Among the respondents, respondent No. 1 is the driver, respondent No. 2 is the Depot Manager and respondent No. 3 is the owner of the vehicle. The respondents/appellants resisted the claim by denying the plea of negligence inasmuch as the other material particulars including the income of the deceased and the loss of dependency etc., etc., and etc. After an enquiry into the controversies, the Tribunal found that the accident was due to the rash and negligent driving of the bus of respondent No. 1, the age of the deceased was 32 years at the relevant time, he was an advocate practising at Sathupalli in Khammam district earning Rs. 1750/- per mensem and adopted the multiplier of 17 and with the multiplicand based on such amount fixed the loss of dependency at Rs. 1,92,000/- and added Rs. 10,000/- towards loss of consortium to claimant No. 1 and Rs. 10,000/- towards loss of expectation of life totalling to Rs. 2,22,000/-. Aggrieved by such findings in regard to negligence and the compensation, the respondents have come up with this appeal.

3. In the Cross-Objections, it is contended that the Tribunal committed a serious error in scaling down the income of the deceased from Rs. 2500/- as against the evidence to Rs. 1750/-, thereby reducing the multiplicand and thus resulting in inadequacy of the compensation. In addition to this, Sri E.S. Ramachandra Murthy, learned advocate for the claimants, has contended that strictly speaking the claimants had set up the quantum of compensation at Rs. 10,00,000/- and restricted the same to Rs. 4,00,000/- and even then, that is scaled down to 2,22,000, thereby making it unjust compensation as against Section 110-B of the Act. Mr. Krishna, learned advocate for the respondents, who argued the matter along with Smt. Vyjayanthi has contended that such findings of the tribunal are

open for assailment in view of the clear evidence in the case leading to wrong inferences and the wrong findings.

4. This Court with all anxiety has reassessed the whole materials on record and has found that there is no reason to interfere with the finding of negligence recorded by the tribunal as against the 1st respondent in causing the accident. The tribunal has given adequate and convincing reasons in support of such a finding. From the evidence, it is revealed that the bus dashed the scooter from behind and the explanation that while in the process of avoiding buffaloes the driver of the bus could not avoid the accident did not find favour with the tribunal. The conduct of the respondent No.1 in not filing F.I.R. with the police and not coming up with the explanation by means of a report to his official superiors was an added factor to suffer the finding of negligence against the 1st respondent. Subramanya Iyer's case, 1970 ACJ 110 (SC) had declared that the finding of the trial Court or the tribunal cannot be lightly interfered with in the appeal when adequate reasons are provided in the judgment and the award. This is one of such cases wherein the tribunal has given sufficient and cogent reasons in support of the finding which this court finds no reason to interfere. The efforts of Mr. Krishna, learned advocate for the respondents, to persuade this Court to take any other view by this Court have become unsuccessful.

5. The tribunal has rightly adopted the multiplier method which is accepted to be most scientific method both by the Supreme Court in *Susamma Thomas and Ors. v. General Manager, Kerala State Road Transport Corporation, Trivandrum*, 1994 (1) ALT 1 (SC) = 1994 (2) SCC 173 and *U.P.S.R.T.C. v. Trilokchandra*, 1996 (4) Supreme 479 = 1996 (2) ALT 36 (D.N.) and this Court in *A.P.S.R.T.C. v. B. Krishnaji Rao and Anr.*, : AIR 1995 AP65 . The grievance of Mr. Krishna, learned advocate for the respondents, is that the tribunal has not only wrongly adopted the multiplier of 17 as against the settled law but also wrongly calculated the loss of dependency. Since the matter is going to be independently examined and decided, such mistakes can be really rectified, if be so, The income of the deceased as per the evidence as an advocate is said to be Rs. 2,500/- per mensem. The deceased is none other than the son of a senior advocate, who is practising in Khammam. P.W.I, father of the deceased, testified the income of the

deceased in the witness box as Rs. 2,500/-. The tribunal felt that such exaggerations in the income should not be taken into consideration and thereby reduced it to Rs. 1750/-, deducted Rs. 750/- towards the personal expenses of the deceased and thus fixed the contribution of the deceased to the family at Rs. 1,000/- per mensem and with the multiplicand of Rs. 12,000/- and multiplier of 17 fixed the loss of dependency of the deceased. The learned advocate for the claimants with equal effort and vehemence contended that in the first place the testimony of P.W.I, who is the father of the deceased, could not have been doubted in regard to the income without any reasons. Secondly, according to him, the deceased was not such a junior advocate so as to think that his income was less than Rs. 2,500/-. But the circumstances show from the evidence that the deceased was not independently practising and he was one of the members of the profession in the office of his father along with other two or three junior advocates. Therefore, the income of the deceased at Rs. 2,500/- as testified by P.W.I, which was not supported by any documentary evidence was rightly scaled down by the Tribunal. But the question is whether such a scaling down would have been more than one fourth. Giving a margin for such exaggerations, anxieties and momentary explanations by persons like P.W.I in the status of a senior advocate, who is none other than the father of the deceased, this Court after anxious consideration of the matter prefers to take Rs. 2,000/- as the income of the deceased out of his profession. Presuming that the deceased entered the profession at the age of about 25, his practice as on the date of the accident was five years. If an advocate cannot get Rs. 2,500/- per mensem even after five years' practice, it is not worth continuing in the profession and better to seek the profession elsewhere. But that will be a question of fact to be decided in each case. However, as has been settled, when the materials fail to come before the Court or the tribunal, it should use its legal wisdom and the life's experience which is called as intellectual surmises or permissible conjectures which can be brought within the terminology of judicial notice. Therefore, Rs. 2,000/- as income of the deceased per mensem cannot be neither exaggerated nor excessive. Sitsammas's case (2 supra) taking into consideration so many aspects has left a guideline in regard to the deduction of personal expenses which should not exceed one third of the income. Here is an individual, who is an young advocate, having to come up in the profession either

with his father, who is a senior advocate, or by himself in future would have done well in the profession and his income could not be constant either at Rs. 2,000/- or Rs. 2,500/- per mensem. It may not be unjust or unfair to say that his opportunities were very wide and sky height. Apart from this, the opportunities of the deceased becoming a judicial officer or any other legal post as legal profession in the bar is the main source of the bench from top to bottom cannot be ignored. Taking that into consideration, the deduction in this case cannot be more than one fourth of the income and thus , his contribution to the family can be conveniently taken at Rs. 1,500 / - per mensem or Rs. 18,000/- per annum. That should represent the multiplicand for the purpose of assessing the compensation. For his age of 32, as laid down in Susamma's case (2 supra) which governs the same, the multiplier cannot exceed 14. With the multiplicand of Rs. 18,000/- and the multiplier of 14, the loss of dependency could be Rs. 2,52,000/-. To this amount, a conventional sum of Rs. 15,000/- towards loss of expectation of life and Rs. 15,000/- towards the loss of consortium to claimant No. 1 should be added as per the guideline both in Susamma's case (2 supra) and Trilokchandra's case (3 supra). Added to this Rs. 3,000/- towards incidental expenses including funeral expenses would be reasonable. Thus, the total compensation in this case ought to be Rs. 2,85,000/-.

6. Thus the contention of the respondents that the amount of Rs. 2,22,000/- is excessive has no merit and the Cross-Objections of the claimants that the compensation is inadequate is justified. In that sense of the matter, the award of the tribunal although cannot be termed as unjustified requires to be modified.

7. The appeal is dismissed and the Cross-Objections filed by the claimants are allowed. The award of the tribunal is modified to the effect that the claimants in this case shall be entitled to recover Rs. 2,85,000/- by way of compensation with costs of the proceedings together with simple interest at the rate of 12 per cent per annum from the date of petition till the date of payment. This shall be subject to depositing the amounts in accordance with the guidelines issued by the Supreme Court in Susamma's case (2 supra) and Trilokchandra's case (3 supra). In view of the peculiar circumstances of the case, there shall be no order as to costs in this appeal.

