

Nagarapu Balaiah and ors. Vs. K. Venugopal and anr.

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Court : Andhra Pradesh

Decided On : Dec-30-2005

Reported in : II(2006)ACC476; 2006(2)ALD409

Judge : G. Chandraiah, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 163A and 166; Motor Vehicles (Amendment) Act, 1994

Appeal No. : CMA No. 1723 of 2002

Appellant : Nagarapu Balaiah and ors.

Respondent : K. Venugopal and anr.

Advocate for Def. : K. Ravi, Adv. for Respondent No. 2

Advocate for Pet/Ap. : K. Raji Reddy, Adv.

Disposition : Appeal allowed

Judgement :

G. Chandraiah, J.

1. Heard both the Counsel.

2. Not being satisfied with the compensation awarded by the Court of Motor Vehicles Accidents Claims Tribunal-cum-District Judge, Medak at Sangareddy in O.P. No.279/1998 dated 6-9-2001, the claimants filed this appeal.

3. The brief facts of the case are that on 13-7-1998 at about 8 p.m., the deceased Nagamma and her husband, were returning to the village Kaidampally after purchasing house hold articles in the shandy and when they reached Kothatola, a truck bearing No.AP - 23-T-1490 came from behind and due to rash and negligent driving, dashed the deceased and she sustained injuries on lower stomach left side and she was shifted to Gandhi Hospital for treatment and there she died. The claimants, who are the husband and the children of the deceased in the claim petition stated that the deceased was supplying milk to a hotel at Alladurg and was getting Rs.2,100/- per month and she was also getting Rs.900/-per month by doing labour work. They also stated that they were dependent on her earnings and thus claimed an amount of Rs. 1,50,000/- with interest.

4. The owner of the truck remained ex parte and the insurer contested the matter and denying the averments of the claimants, sought for dismissal of the claim petition,

5. The Court below after framing appropriate issues and appreciating the evidence both oral and documentary held that the accident occurred due to rash and negligent driving of the driver of the lorry. With regard to income of the deceased, the husband of the deceased who was examined as P.W.I deposed that the deceased was earning an amount of Rs.4,000/- per month by attending to household works. As there is no evidence in this respect, the Court below held that as the deceased was aged 50 years, she may earn Rs.40/- per day by doing some work and can earn Rs. 1,200/-per month and after reducing 1/3rd towards personal expenses, arrived the income of the deceased at Rs.800/- and taking the age of the deceased as 50 as per inquest report and post-mortem report Exs.A-3 and A-4, the Court below applied the multiplier of 5.68 as per Bhagwan Das v. Mohd. Arif 1987 (2) ALT 137, and granted an amount of Rs.54,528/- towards pecuniary damages and also granted Rs.15,000/- towards loss of consortium and thus in all granted an amount of Rs.69,530/- with interest at the rate of 9 per cent

per annum and ordered for apportionment.

6. In the ground of appeal, the Counsel appearing for the claimants contended that the deceased was earning Rs.3,000/- by supplying milk to a hotel and by doing other labour works and, therefore, the Court below erred in fixing the income of the deceased at Rs. 1,200/- and that the Court below ought to have fixed the income of the deceased at least Rs.2,000/- per month.

7. On the other hand, the learned Counsel for the respondent - insurer supporting the impugned order, sought for dismissal of appeal.

8. From the evidence of P.W.I and from Ex.A-1 F.I.R., on 13-7-1998 when P.W.I and the deceased were returning after purchase of household articles in the shandy, lorry came from behind and dashed the deceased and she succumbed to the injuries in the Gandhi Hospital. From the evidence it could be seen that the deceased was the wife of the 1st claimant and mother of claimants 2 and 3. The case of the 1st claimant, as P.W.I is that the deceased was earning Rs.4,000/- per month by attending to household duties. But there is no evidence in this regard. To rebut the evidence of the claimants, the insurance company also did not choose to adduce any evidence. Even assuming that the petitioner is not attending to any work, but in the light of the above evidence that the accident occurred while P.W.I and the deceased were returning after purchasing household articles and that claimants 2 and 3 are their children, it can be presumed that at least she was attending to household duties in her home. The Apex Court in the decision reported in *Lata Wadhwa v. State of Bihar* : (2001)11LLJ 1559 SC , while granting compensation to the victim of the accident that occurred in a Tata Iron and Steel Company, considering the report submitted by Hon'ble Sri Justice Y.V. Chandrachud (former Chief Justice of India) with regard to grant of compensation and also taking into account the judgments of this Court in *Chairman, A.P.S.R.T.C. v. Shafiya Khatoon* 1985 ACJ 212, *Bhagwan Das v. Mohd. Arif* 1987 ACJ 1052 and *A.P.S.R.T.C. v. G. Ramanaiah* 1988 ACJ 223, for applying the multiplier method, held at Paragraph No. 10 of the judgment that in case of house wives, even in absence of relevant date and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a

modest estimation, should be Rs.3,000/- per month and Rs.36,000/- per annum and that this would apply to the housewives between the age group of 34 to 59. The relevant portion of the judgment is extracted as under :.It is true that the claimants, who ought to have given date for determination of compensation, did not assist in any manner by providing the date for estimating the value of services rendered by such housewives. But even in the absence of such data and taking into consideration the multifarious services rendered by the housewives for managing the entire family, even on a modest estimation, should be Rs.3,000/- per month and Rs.36,000/- per annum. This would apply to all those housewives between the age group of 34 to 59 and as such who were active in life.

9. Further a Division Bench of this Court in EM, Oriental Fire and General Insurance Co., Ltd. v. Dr. C.C.O. Reddy : 2004(4)ALD883 , held that while estimating the services of housewife, a narrow meaning should not be given to her services and that Court has to take into account her constant love and affection as also her personal care and attention to her children as mother and as wife to her husband.

10. Therefore, in view of the above judgments of the Apex Court and a Division Bench of this Court Lata Wadhwa v. State of Bihar and BM, Oriental Fire and General Insurance Co. Ltd, v. Dr. C.C.O. Reddy (supra), it is clear that in case of housewives, even in the absence of any evidence, taking into account her multifarious services and her constant love and affection as also her personal care and attention to her children as mother and as wife to her husband, a narrow meaning should not be given and as per the judgment of the Apex Court in Lata Wadhwa v. State of Bihar (supra), the modest estimation of the monthly income of the housewife should be Rs.3,000/-.

11. In the present case, the deceased is aged 50 years. Therefore following the above judgments, even in the absence of any proof with regard to her income, taking her services as housewife, her contribution towards the family can be fixed at Rs.3,000/-and if 1/3rd is deducted towards personal expenses, the income of the deceased can safely be fixed at Rs.2,000/- per month. Therefore, in my considered view, the fixation of the income of the deceased at Rs. 1,200/- per

month, is grossly on the lower side and cannot be sustained.

12. Coming to the fixation of multiplier, it is to be seen that the accident occurred on 13-7-1998 i.e., after the Amendment Act 54 of 1994 by which Section 163-A with second schedule was inserted to the [Motor Vehicles Act, 1988](#). Though the present award is passed under Section 166 of the Act, as per the judgment of the Apex Court in *Supreeth v. National Insurance Co. Ltd.*, the second schedule given to Section 163-A can be taken as guideline for determination of compensation under Section 166 of the Act. But the Court below taking into consideration of the table given in the *Bhagwan Das* case (supra) applied the multiplier of 5.68. In my considered view, without taking the assistance from second schedule, the application of multiplier at 5.68 is not proper. Further a learned Single Judge of this Court in *K. Matura Bai v. A. Shiva Nageswara Rao* : 2004(3)ALD658, considering various judgments of this Court as well as Apex Court, held that multiplier in structured formula as given in second schedule of Section 163-A has to be followed even for the applications under Section 166 of the Act, as the multiplier table given in *Bhagawandas* case (supra) not having been updated. Therefore, in my considered view, the multiplier can be fixed at 11 as per the second schedule to Section 163-A of the Act, as the age of the deceased is 50.

13. In view of the foregoing reasons, the income of the deceased is fixed at Rs.2,000/- per month and her yearly contribution to the family is fixed at Rs.24,000/- and the multiplier 11 is applied, whereby the claimants are granted an amount of Rs.2,64,000/- and also Rs.15,000/- as granted by the Court below towards loss of consortium. Thus in all the claimants are granted an amount of Rs.2,79,000/- (Rupees two lakhs seventy nine thousand only) with interest at the rate of 7.5 per cent per annum from the date of petition till date of realization.

14. Though the claimants claimed an amount of Rs. 1,50,000/-, since as per the judgment of the Apex Court in *Lata Wadhwa v. State of Bihar* case (supra) they are entitled to more compensation, they are granted the above compensation and the same permissible as per the judgment of the Division Bench of this Court in *Dr. C.C.O. Reddy's* case (supra), wherein it was held that there is no restriction that compensation could be awarded only upto the amount claimed by the claimant

and that in appropriate case the Court can award more compensation. The relevant portion of the judgment is extracted as under for ready reference :

15... There is no restriction that compensation could be awarded only upto the amount claimed by the claimant. In an appropriate case wherefrom the evidence brought on record if Tribunal considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. What the Supreme Court in Nagappa v. Goru Dayal Singh : AIR 2003 SC674 , has stated in the aforesaid decision is that the Courts have got jurisdiction to grant more compensation than claimed.

15. In view of the foregoing reasons, the appeal is accordingly allowed. No costs.

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