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APHC010043512012



**IN THE HIGH COURT OF ANDHRA PRADESH
 AT AMARAVATI
 (Special Original Jurisdiction)**

[3520]

FRIDAY, THE TENTH DAY OF APRIL
 TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 2084/2012

Between:

1.S. KHADER BASHA, W/O S. PAKEER SAHEB, MUSLIM R/O RTC
 NALLAGUTTA, PILER, CHITTOOR DISTRICT.

...APPELLANT

AND

1.A P S R T C REP BY ITS M D, Rep. by its Managing Director,
 Musheerabad, RTC Cross Roads, Hyderabad

...RESPONDENT

Appeal filed under Order 41 of CPC praying that the Highcourt may be pleased to order dt. 29-2-2012 passed in MVOP No. 327 of 2009 on the file of the Court of the Chairman, Motor Accidents Claims Tribunal Cum III Additional District Judge, Tirupati.

Counsel for the Appellant:

1.T NAGARJUNA REDDY

Counsel for the Respondent:

- 1.ARAVALA RAMA RAO(SC FOR APSRTC KKAC)

The Court made the following:

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA**M.A.C.M.A.No.2084 of 2012****JUDGMENT:****Introductory:**

1. The claimant in M.V.O.P.No.327 of 2009 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District and Sessions Judge, Tirupati (for short “the learned MACT”), feeling aggrieved by the dismissal of his claim petition filed in terms of Section 163-A of the Motor Vehicles Act, filed the present appeal, questioning the dismissal.

2. For the sake of convenience, the parties will be hereinafter referred to as the petitioner/claimant and the respondent, as and how they are arrayed in the impugned proceedings.

Factual Matrix:

3. Respondent herein is the respondent before the learned MACT. Son and daughter-in-law of the claimant/petitioner died in road traffic accident that occurred while they were proceeding on a motorcycle bearing No.AP 03 AH 2710 near Jammallapalle Village at about 02:15 p.m. on 18.04.2009. A.P.S.R.T.C. bus bearing No.AP 11 Z 2750 (hereinafter referred to as “the offending vehicle”) came in the opposite direction and dashed the motorcycle, causing the accident and resulting in the death of both the son and daughter-in-law of the claimant. Claims *vide* M.V.O.P.Nos.327 and 328 of 2009 were laid by the claimant herein.

4. The claim made for compensation for the death of the son of the appellant was allowed, awarding compensation of Rs.3,97,000/-. However, the claim made for compensation for the death of the daughter-in-law of the claimant was dismissed on the ground of absence of dependency. Aggrieved by the dismissal of the claim, contending that the claimant can be considered both as a legal heir and dependent of the deceased daughter-in-law and disputing the dismissal of the claim, the present appeal is filed.

5. Extensive arguments are submitted for both sides.

Arguments in the appeal:

For the appellant:

6. Merely on the ground that the claim in respect of the son is allowed, dismissal of the claim in respect of the loss of dependency on daughter-in-law is not correct.

7. The claimant can be considered as dependent even on the daughter-in-law, as they are living together and as he is aged '58' years.

For the A.P.S.R.T.C.:

8. Father-in-law cannot be considered as a dependent or legal heir of the daughter-in-law and the dismissal of the claim by the learned MACT is proper.

9. Perused the record. Thoughtful consideration is given to the arguments advanced by both sides.

Points:

10. The points that arise for consideration in this appeal are:

- 1) Whether a father-in-law can be considered as dependent on the deceased daughter-in-law for a claim for compensation when the death of the daughter-in-law takes place due to motor vehicle accident?
- 2) Whether the appellant/claimant is entitled for compensation? If so, to what amount?
- 3) What is the result of the appeal?

Point Nos.1 and 2:**Evidence relating to dependency and legal heir status:**

11(i). In the inquest report, the claimant participated as a blood relative. The petitioner / claimant as P.W.1 deposed that he is the only legal heir and that he was dependent on the income of the deceased. The deceased was getting/earning Rs.4,000/- per month. He further stated that he lost the love and affection of the deceased and that there is none to take care of him, as his son also died.

(ii). During the cross-examination of P.W.1, not even a suggestion is given that the claimant is having independent income and that he is not dependent on the deceased. A simple suggestion was given that the deceased was not earning Rs.4,000/- as claimed. But, it was elicited that the deceased was collecting milk and supplying it to a depot.

12(i). P.W.2 stated that the deceased was a tailor by profession and was selling milk and earning money for the family. The petitioner / claimant and the deceased were residing under one roof as a joint family.

(ii). During the cross-examination of P.W.2, it is elicited that P.W.2 is doing business in a provisions shop and as a resident of a neighboring village of the petitioner, he had acquaintance with the petitioner's family for 15 years, as they are coming to his shop. The dependency of the claimant on the deceased is not disputed during the cross examination of P.W.2 nor the joint living of the deceased with the petitioner disputed.

(iii). Therefore, the joint living of the deceased and the petitioner is very clear. Merely because the claimant has received compensation for the death of his son, whether he is not entitled for compensation for the death of his daughter-in-law is one aspect and whether in respect of death of his daughter-in-law, the claimant is entitled for compensation is the second aspect require consideration.

Jurisprudence:

13. The legal position regarding *locus standi* of a person to make a claim for compensation in terms of the Motor Vehicles Act, in the event of death of a person, was addressed by Hon'ble Apex Court in ***Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and another***¹. The interpretation of expression "legal representative" with reference to the Fatal

¹ 1987 Supreme (SC) 522; 1987 ACJ 561; 1987 3 SCC 234

Accidents Act and the Motor Vehicles Act was considered by the Hon'ble Apex Court and the observations in paragraph Nos.10 to 13 of the judgment are relevant. They are as follows:

10. Amongst the High courts in India there is a cleavage in the opinion as regards the maintainability of action under S.110-A of the Act by persons other than the wife, husband, parent and child of the person who dies on account of a motor vehicle accident. All these cases are considered by the High Court of Gujarat in its decision in Megjibhai Khimji Vira v. Chaturbhai Taljabhai, (AIR 1977 Guj 195) (supra). The first set of cases are those which are referred to in paragraph 5 of the above decision which lay down that every claim application for compensation arising out of a fatal accident would be governed by the substantive provisions in Ss. 1-A and 2 of the 1855 Act and no dependent of the deceased other than the wife, husband, parent or child would be entitled to commence an action for damages against the tortfeasors. Amongst these cases are P. B. Kader v. Thatchamma, AIR 1970 Ker 241 and Dewan Hari Chand v. Municipal Corpn. of Delhi, AIR 1973 Delhi 67. The second group of cases are those referred to in Para 6 of the decision of the Gujarat High court. They are Perumal v. Ellusamy Reddiar, 1974 Acc CJ 482 (Mad) and the Vanguard Insurance Co. Ltd. v. Hanumantha Rao, 1975 Acc CJ -344 (Andh Pra). These cases lay down that while the compensation payable under S.1-A of the Fatal Accidents Act, 1855 is restricted to the relatives of the deceased named therein the compensation payable under S. 2 thereof may be awarded in favour of the representatives of the deceased who are entitled to succeed to the estate of the deceased. The third group of cases are those referred to in para 7 of the judgment of the Gujarat High Court. They are Mohmammed Habibullah v. K. Seethammal, AIR 1967 Mad 123; Veena Kumari Kohli v. Punjab Roadways, 1967 Acc CJ 297 (Punj) and Smt. Ishwari Devi Malik v. Union of India, AIR 1969 Delhi 183 which take

the view that a claim for compensation arising out of the use of a motor vehicle would be exclusively governed by the provisions of Ss. 110 to 110-F of the Act and bears no connection to claims under the 1855 Act and the Claims Tribunal need not follow the principles laid down under the latter Act. Having considered all the three sets of decisions referred to above, Ahmadi, J. who wrote the judgment in Megjibhai Khimji Vira v. Chaturbhai Taljabhai, (AIR 1977 Guj 195) (supra) came to the conclusion that an application made by the nephews of the deceased who died on account of a motor vehicle accident was clearly maintainable under S. 110-A of the Act.

11. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by S. 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in S. 110-B of the Act to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by S. 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under S. 110-A of the Act have to be done in accordance with wellknown principles of law. We should remember that in an Indian family brothers, sisters and brothers children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been

substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Megjibhai Khimji Vira. v. Chaturbhai Taljabhai, (AIR 1977 Guj 195) (supra) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under S. 110-A of the Act if he is a legal representative of the deceased.

12. We have carefully gone through the decision of the High Court of Madhya Pradesh in Budha v. Union of India, (AIR 1981 Madh Pra 151) (supra). We feel that the view taken in that decision is a narrow one and does not give full effect to the object with which Ss. 110-A and 110-B of the Act were enacted. We overrule the said decision.

13. Before concluding we may add that although the Act was extensively modified after the receipt of the report of the Law Commission, Parliament did not choose to amend S. 110-A of the Act by defining the expression legal representatives in relation to claims under Chapter VIII of the Act as the spouse, parent and children of the deceased as recommended by the Law Commission. The Law Commission had observed in its 85th report that it would be appropriate to assign to the expression legal representative the same meaning as had been given to the expression representative for the purposes of the Fatal Accidents Act, 1855 and that would effectively carry out the purpose of social justice underlying Chapter VIII of the Act, to which the Fatal Accidents Act, 1855 was the nearest approximation. This recommendation was made after referring to the divergent views expressed by the various High Courts on the meaning of the expression legal representatives in S. 110-A of the Act. The fact that Parliament declined to take any action on the recommendation of the Law Commission of India suggests that Parliament intended that the expression legal representative in S. 110-A of the Act should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased.

14. It is relevant to note that a claim made even by a nephew of the deceased was found maintainable by the Gujarat High Court and the same was found in consonance with the principles. However, the test of dependency shall be kept in view.

15. In ***Montford brothers of St. Gabriel and Another vs. United India Insurance & Another***², the Hon'ble Apex Court examined the maintainability of a claim made by a charitable society to which the deceased was a member and serving by dedicating all his service. In that context, the interpretation of the word/term "legal representative" as to whether it includes even "intermeddlers" etc. was considered by the Hon'ble Apex Court. As per the factual matrix of the said case, when a member in complete dedicated service of the organization died and when the society made a claim and the claim was allowed by the Tribunal, the award was questioned by way of a writ petition, which was allowed considering the scope of the Fatal Accidents Act and the term "legal representative" etc. The Hon'ble Apex Court found that the claim is tenable and that the Insurance Company is liable.

16. Further, the Hon'ble High Court of Andhra Pradesh in ***Dr. Gangaraju Sowmini and Another vs. Alavala Sudhakar Reddy and another***³, examined the sustainability of the claim made by a sister for the death of her brother. The

² 2014 Supreme (SC) 58; 2014 1 ACC 461; 2014 4 SCC (Cri) 628

³ 2016 Supreme (AP) 95; 2016 3 ACC 208

objection of the Insurance Company was that she is not dependent of the deceased was discarded. The Court examined the point as to whether non-dependent heir of the deceased who died in a motor accident, is entitled to lay claim for compensation under Section 166 of the Motor Vehicle Act, 1988, where there is no other dependent legal heir claiming compensation. It was situation of conflicting judgments and a reference was made to a Full Bench. The Full Bench has considered the case with reference to Motor Vehicles Act, 1988, the Motor Vehicles Act, 1939 and other related provisions including Section 163-A of the Motor Vehicles Act. In the said judgment, reference was made to various judgments, including ***Montford brothers of St. Gabriel and Another vs. United India Insurance & Another*** (2 supra) and ***Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and another*** (1 supra) and also the Rule 2(g) of the A.P. Motor Vehicles Rules, 1989, for interpretation of the word "legal representative" with reference to Section 2(11) of the Code of Civil Procedure, 1908. The observations made in para 16 of the judgment as to the interpretation of the word/term "legal representative" and who can make a claim are found relevant in the present case, which are as follows:

16. In view of the clear and unambiguous language under Section 166 of the Motor Vehicles Act, it is clear that application can be made either by the injured or the legal representatives of the deceased. Though 'legal representative' is not defined under the provisions of the Motor Vehicles Act, 1988, from Rule 2(g) of the A.P. Motor Vehicles Rules, 1989, it is clear that the definition of 'legal representative' is given same meaning as defined

under Section 2(11) of the Code of Civil Procedure. In view of the judgment of Hon'ble Supreme Court in Manjuri Bera's case (9 supra), it is clear that the compensation which is payable on account of no fault liability will form part of the estate of deceased. In that view of the matter, there is no basis for contending that the application is to be filed only by the dependants. As we have held that dependency is a matter to be taken into consideration for award of compensation and merely because one is not dependant, that by itself, is no ground for not entertaining any claim made for grant of compensation under the Motor Vehicles Act. In view of the clear language under Section 166 of the Act and in view of the judgment of Hon'ble Supreme Court in Manjuri Bera's case (9 supra), wherein, it is held that the compensation to be awarded under Section 140 of the Motor Vehicles Act will form part of the estate of deceased, and further, as the Act also provides for compensation on other conventional heads, we are of the view that the non-dependant also can lay a claim by filing application under Section 166 of the Act. It is also to be noticed that the situations may arise, where, one may have suffered injuries initially but ultimately after filing a claim, may have succumbed to such injuries also. In such an event, lot of amount would be spent towards hospitalisation etc., and as already discussed in the judgment of Hon'ble Supreme Court in Montford Brothers' case (5 supra), it is common in the Indian society, where, the members of the family who are not even dependant also can extend their support monetarily and otherwise to the victims of accidents to meet the immediate expenditure for hospitalization etc., in such cases, unless the legal representatives are allowed to continue the proceedings initiated by the person who succumbs to injuries subsequently, such claims will be defeated and that will also defeat the very object and intentment of the Act. Any such measure would be wholly unequitable and unjust. Plainly, that would never be intent of any piece of legislation. For the aforesaid reasons and in view of the language under Section 166 of the Motor Vehicles Act, 1988 r/w. Rule 2(g) of the A.P. Motor

Vehicles Rules, 1989, we are of the view that even the legal representatives who are non-dependants can also lay a claim for payment of compensation by making application under Section 166 of the Motor Vehicles Act.

17. From the authorities cited above, it is clear that either a dependent or a legal heir, even a non-dependent legal heir, can maintain a claim in that view of the matter. The dismissal of the claim by the learned MACT is found not tenable. There is no serious dispute about the income of the deceased adopted at Rs.3,000/- per month (i.e. at the rate of Rs.100/- per day) and the quantification of compensation arrived at Rs.3,65,000/-. But, restricting award with reference to the claim made by the claimant is found not proper when the tribunal / the learned MACT has found the entitlement of the claimant at Rs.3,65,000/-.

18. In view of the discussion made above, the order and decree dated 29.02.2012 passed by the learned MACT in M.V.O.P.No.327 of 2009 found not sustainable on law or facts. Accordingly, the same is set-aside and the claimant is entitled for compensation of Rs.3,65,000/- with interest at the rate of 6% per annum from the date of deposit till date of realization. Point Nos.1 and 2 framed are answered accordingly.

Point No.3:

19. In the result, the appeal is allowed.

(1). The order and decree dated 29.02.2012 passed by the learned MACT in M.V.O.P.No.327 of 2009 dismissing the petition are set-aside, and the M.V.O.P.No.327 of 2009 is allowed as follows:

(i) The claimant is entitled for compensation of Rs.3,65,000/- with interest at the rate of 6% per annum from the date of petition till the date of realization.

(ii) The respondent before the learned MACT is liable to pay the compensation.

(iii) The claimant is liable to pay the Court fee for the balanced amount viz.Rs.65,000/-.

(iv) Time for payment/deposit of the amount is two months.

(a) If the claimant furnishes the bank account number within 15 days from today, the Respondent / APSRTC shall deposit the amount directly into the bank account of the claimant and file the necessary proof before the learned MACT.

(b) If the claimant fails to comply with clause (iv)(a) above, respondent / APSRTC shall deposit the amount before the learned MACT and the claimant is entitled to withdraw the amount at once on deposit.

(2) There shall be no order as to costs in the appeal.

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

Date:10.04.2026
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A. HARI HARANADHA SARMA, J

HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA

M.A.C.M.A.No.2084 of 2012

10.04.2026

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