

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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C.M.A.No.4385 of 2003

Between:

Kanamarlapudi Nirmala Devi and others.

....Appellants

and

Shaik Abdul Razak and another.

....Respondents

JUDGMENT PRONOUNCED ON : 01.12.2015

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?

2. Whether the copies of judgment may be : Yes
Marked to Law Reporters/Journals?

3. Whether Their Ladyship/Lordship wish to : Yes

see the fair copy of the Judgment?

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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....Respondents

Counsel for appellants: Sri N.Subba Rao

Counsel for the Respondents : Sri Ravi Shanker Jandhyala

< Gist:

> Head Note:

? CITATIONS:

1. 2001 (1) ALD 453 (DB)
2. (1999) 8 SCC 226
3. AIR 1998 SC 257

4. 1992 (2) ALT 155
5. 2004 (2) ALT 8 (DB)
6. 2001 (1) ALT 495 (DB)
7. 2009 (3) Supreme 487 : (2009) 6 SCC 121 : 2009 (3) ALD 83 (SC)
8. (2013) 9 SCC 54

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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C.M.A.No.4385 of 2003

JUDGMENT:

In this appeal the owner of the vehicle was not served and a point arose whether the presence of the owner is necessary in an appeal filed by the claimants seeking enhancement of the compensation. Hence, it has become necessary for this Court to decide the said point, as this point has been arising in a number of appeals pending in this Court.

Chapter XII of the Motor Vehicles Act, 1988 (for short, the Act), deals with Claims Tribunals. Section 165 thereof provides for constitution of Motor Accident Claims Tribunal and Section 166 provides for filing an application for compensation arising out of an accident. Subsection (4) thereof provides for treating the report of accidents forwarded to it under subsection (6) of Section 158 as an application for compensation under the Act without there being any need for a separate application by the claimants. Section 167 gives an option to file a claim for compensation either under the Workmen's Compensation Act, 1923 or under the provisions of the Motor Vehicles Act. The Claims Tribunal passes an award under Section 168 of the Act.

The procedure and powers of the Claims Tribunal are prescribed under Section 169 of the Act. Section 170 of the Act provides for impleading the insurer in certain cases and those cases relate to collusion between the person making the claim and the person against whom the claim is made, or the

person against whom the claim is made had failed to contest the claim. Section 171 of the Act deals with award of interest and Section 172 deals with award of compensatory costs in certain cases. Section 173 of the Act provides for appeals.

Thus, the relevant provisions of the said Chapter are extracted hereunder:

“168. Award of the Claims Tribunal – (1) On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.

169. Procedure and powers of Claims Tribunals - (1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of and matter relevant to the inquiry to assist it in holding the inquiry.

170. Impleading insurer in certain cases - Where in the course of any inquiry, the Claims Tribunal is satisfied that-

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

...

173. Appeals - (1) Subject to the provisions of sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or

fifty per cent. of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court may entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.”

The Andhra Pradesh Motor Vehicles Rules, 1989 (for short, the Rules), were issued in G.O.Ms.No.216, Transport, Roads & Buildings (Transport-II), dated 07.08.1989), in exercise of powers conferred under various Sections of the Act, including Section 176 occurring in Chapter XII above.

Rules 455 to 476-A in Chapter XI of the Rules deal with the Claims Tribunals. Rule 458 thereof says that a notice of claim shall be sent to the owner of the motor vehicle involved in the accident and its insurer. Rule 459 of the Rules deals with appearance and examination of parties, whereas Rule 460 deals with summoning of witnesses. The procedure before the Tribunal is said to be summary in nature. Rule 471 of the Rules deals with judgment and award of compensation. Some provisions of the Code of Civil Procedure were made applicable in Rule 473.

Rule 474 of the Rules deals with form and number of appeals against the decision of Claims Tribunal. Rule 476 deals with the procedure for application, fee, consideration of the claim, basis of award, award and limitation for disposal of application.

Rules 473 and 474 of the Rules are relevant for the purpose of disposal of the present case and are extracted as under:

“473. Code of Civil Procedure to apply in certain cases –

The following provisions of the First Schedule to the Code of Civil Procedure, 1908 (Central Act 5 of 1908), shall so far as may be, apply to proceedings before the Claims Tribunal namely, Order V, Rules 9 to 13 and 15 to 30; Order IX, Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII and Order XXVIII; Rules 1 to 3.

474. Form and number of appeals against the decision of Claims Tribunal - (1) An appeal against the award of a Claims Tribunal shall be preferred in the form of a memorandum stating concisely, the grounds on which the appeal is preferred.

(2) It shall be accompanied by a copy of the judgment and the award appealed against.”

In several appeals this Court is facing this problem of non-appearance of the owners of the vehicles and in view of the non-service of notices on the said owners, the appeals are being dismissed on the ground that the liability of the insurance company is coextensive with that of the owner of the vehicle.

Learned Counsel for the appellants/claimants in several cases relied on a Division Bench decision of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**. The Division Bench was considering the following questions which were referred to it in view of the divergence of opinion expressed by two learned single Judges in C.M.A.No.588 of 1992 dated 28.07.1999 and C.M.A.No.448 of 1991 dated 07.06.2000.

“(1) What is the effect of the non-presence of the owner of a motor vehicle (insured at the appellate stage, if the appeal against the owner is dismissed for default for non-payment of 'batta' or for non-compliance with the orders of the Court?

(2) If the lower Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the motor vehicle by its driver, and if such a finding is not challenged by the Insurance Company in the appeal, whether there is any need for the presence of the owner of the motor vehicle?

(3) In an appeal filed by the Insurance Company, if the owner of the motor vehicle is not present (i.e., if the appeal as against the owner is dismissed), what is the effect of the same on the said appeal?

(4) In an appeal filed by the claimant, if the Insurance Company has not filed any cross appeal, what is the need for the presence of the owner of the motor vehicle?”

The latter decision in C.M.A.No.448 of 1991 was based on the decision of the Supreme Court in **A.Robert v. United Insurance Company Limited**, whereas the earlier decision was based on **Oriental Insurance Company Limited v. Sunitha Rathi**. The Division Bench held that there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the insurer. But, in case it exceeds, it was held that it cannot be decided in the absence of owners. For coming to the said conclusion, the Division Bench approved the decision of another learned single Judge in **The Branch Manager, The New India Assurance Company Limited v. Harijina Babukka**. Accordingly, it answered question Nos.1 to 3 and question No.4 was held unnecessary. The findings are as follows:

“13. Accordingly the questions 1 and 2 are answered holding that even if the appeal is dismissed against the owner of the vehicle, the question of statutory liability of the Insurance Company survives for consideration and there is no need for the presence of the owner of the vehicle to decide the question of statutory liability of the Insurance Company at the appellate stage in the cases wherever the Tribunal recorded a finding that the accident has taken place due to the rash and/or negligent driving of the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the Insurance Company.

14. With regard to the third question, the only limited scope for the Insurance Company to contest the claim on all or any of all the grounds that are available to the insured person is available only when there is collusion between the person making the claim and the person against whom the claim is made or the person against whom the claim is made has failed to contest the claim. If the owner of the vehicle fails to contest the claim before the Tribunal, the Insurance Company can contest the claim only before the Tribunal, if it gets itself impleaded by an order of the Tribunal to contest on the grounds mentioned under [Section 170](#) of the Act and in the absence of such an order, the Insurance Company cannot maintain an appeal as mentioned in [Section 170](#) of the Act. With regard to the determination to the extent of the statutory liability of the Insurance Company, in an appeal filed by the Insurance Company before the appellate authority, it can be decided even in the absence of the owner of the vehicle. The limited scope available for filing the appeal other than the grounds mentioned under [Section 170\(a\)](#) and (b) is only with regard to the excess quantum of the compensation payable by it over and above the statutory liability and that question can be decided at the appellate stage insofar as the statutory liability is concerned even in the absence of the owner.

In **Harijina Babukka's** case (supra), a learned single Judge of this Court

was considering the appeal preferred by the Insurance Company. In the said decision it was held that when the owner himself remained ex parte and he allowed the Court to pass an order on merits, non impleading of the owner by the Insurance Company cannot be said to be a fatal one. Learned single Judge took the aid of the decision of Ramaswamy, J (as he then was) in C.M.A.No.503 of 1987 holding that notice was not necessary to the owner and it has to be dispensed with. However, that case is a case where the liability of the insurance company was limited to Rs.15,000/-.

Another decision of the Division Bench is also pressed into service. The said decision was rendered in **R.Kamala v. Shaik Mohd.Ghouse**. Following the decision in **M.Chakra Rao v. Y.Babu Rao** it was held that the cause of action in the event of death of the insured would still survive against his estate or against the insurer and dismissal of appeal as not maintainable in the absence of the legal representatives of the deceased owner-insured, was not correct.

In **A.Robert's** case (supra) also the Supreme Court was considering the appeal preferred by the claimants. The Supreme Court entertained the SLP against the insurance company even after dismissal of the same as against the owner of the vehicle due to absence of service on him. No clear finding was recorded with regard to the necessity of the owner of the vehicle in appeal preferred by the claimants or by the insurance company.

At this stage it is relevant to notice the amendment made to sub rule (1) of Rule 14 of Order XLI of CPC and after amendment, it reads as follows:

“14. Publication and service of notice of day for hearing appeal.- (1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Provided that the Appellate Court may dispense with service

of notice on respondents, who have remained absent, against whom the suit has proceeded *ex-parte* in the Court from whose decree the appeal is preferred or who have been declared absent by the said Court.

(2) *Appellate Court may itself cause notice to be served*—Instead of sending the notice to the court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

(3) The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.

(4) Notwithstanding anything to the contrary contained in sub-rule (1), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, unless he has appeared and filed an address for the service in the court of first instance or has appeared in the appeal.

(5) Nothing in sub-rule (4) shall bar the respondent referred to it in the appeal from defending it.

Proviso to Rule 1 is relevant at this juncture and it makes it clear that in case a party remained *ex parte* in the Tribunal, the notice to such party can be dispensed with by the appellate Court.

In view of the above legislative provisions and the law laid down by this Court in the above decisions of the Division Bench, it is not necessary for this Court to send a notice to a party who remained *ex parte* in the Tribunal. The said position equally applies to the cases where the insurance company prefers an appeal against the award made by the Tribunal where the insurer remained *ex parte* in spite of the fact of insurer taking a stand that it cannot be held liable. Hence, I hold that the insured, who remained *ex parte* in the lower Court, need not be served in the appeal preferred by the claimants as well as the appeals preferred by the insurance company. Where the owner of the vehicle contested the case and a finding was recorded by the Tribunal that the accident occurred due to rash and negligent driving of the driver of the vehicle, in such a case it is open to the owner to file an appeal and challenge the said finding. But in rest of the cases where the claimants or the insurance company are the appellants, and when the said finding becomes final, the presence of the owner of the vehicle is not necessary.

Now I proceed with the merits of the case.

The claimants are the appellants and the appeal is filed seeking enhancement of compensation for the death of the husband of the first appellant and father of appellants 2 to 5 in a motor accident that occurred on 10.03.1999 at about 2.00 pm near Nagallapalli Village, Nalgonda District.

It was alleged in the petition filed before the Tribunal that on 10.03.1999 at about 2.00 pm while the husband of the first claimant and father of claimants 2 to 5 sat in front of his lorry bearing No.AP 7T 4920 which was stationed by the left side road margin for repairs near Nagallapalli Village, Chintapalli Mandal of Nalgonda District on Hyderabad-Nagarjuna Sagar road, the driver of the lorry bearing No.AAG 3344 coming from Hyderabad side towards Nagarjuna Sagar drove the lorry in a rash and negligent manner and dashed the stationary lorry, as a result of which the stationary lorry ran over him, who sat at some distance away in front of his stationary lorry and he died. He was aged about 40 years and used to do business in Lime industry (Pulverizing Mills). He was having 45% share in the said Mill by name Mahalakshmi Industries at Piduguralla. He also used to do slate business at Kondamodu of Rajupalem Mandal and used to earn Rs.2,50,000/- per year. Accordingly, the claimants claimed an amount of Rs.7,00,000/-.

The Tribunal framed the following issues:

- “1. Whether the accident occurred due to rash and negligent driving of the driver of Lorry bearing No.AAG 3344?
2. Whether the petitioners are entitled to compensation and if so, to what amount and against whom?
3. To what relief?”

The claimants examined P.Ws.1 to 7 and marked Exs.A1 to A15.

On the basis of the oral and documentary evidence, the Tribunal came to the conclusion that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.AAG 3344.

In support of the claim for compensation, the first claimant was examined as P.W.1. P.W.4, who is the partner of Maharaja Industries situated at Piduguralla, was also examined. P.W.5 was another partner of Laxmi Narasimha Slate Firm. P.W.6 was the Deputy Manager, SBI, Guntur Branch. P.W.1 filed Ex.A7 – attested copy of partnership deed relating to the deceased. Ex.A8 was the temporary permission to run Lime Industry and Ex.A9 was the registration of proposed SSI Unit of Lime Industry. Ex.A10 was the partnership deed relating to the deceased pertaining to slate business and Ex.A11 was the certificate of registration of slate business. The evidence disclosed that the partnership firm was still continuing and subsequent to the death of her husband, she joined as the partner and was getting profits. She also joined as a partner in the place of her husband in the Slate Firm. She stated that her husband was an Income Tax assessee, but did not file any documentary evidence.

The Tribunal took the age of the deceased as 42 to 45 years on the basis of Exs.A7 and A10 and applied the multiplier of 9. The income of the deceased was taken as Rs.2,400/- per month and $\frac{1}{3}^{\text{rd}}$ was deducted therefrom. Accordingly, the loss of earnings was calculated at an amount of Rs.1,72,800/- and an amount of Rs.15,000/- was awarded towards consortium and another amount of Rs.15,000/- towards loss of estate. Thus, in all, an amount of Rs.2,02,800/- was awarded with interest at 9% per annum.

In view of the decision in **Smt.Sarla Verma v. Delhi Transport Corporation**, the appropriate multiplier for the person aged 42 to 45 years is 14. As per **Rajesh v. Rajbir Singh**, there must also be enhancement in the

income, which can be taken as 30%. The monthly income of Rs.2,400/- is grossly inadequate.

The monthly income of the deceased should be at least Rs.3,600/- with 30% enhancement. In view of the number of dependants of the deceased, the appropriate deduction should be 1/4th, but not 1/3rd. The loss of dependency, therefore, comes to Rs.5,89,680/- (Rs.3,600 + 1080 (3600 X 30/100) = Rs.4,680/-; Rs.4,680 - 1170 (4680/4) = Rs.3,510/-; Rs.3,510 X 12 X 14 = Rs.5,89,680/-). The loss of consortium should be enhanced to Rs.50,000/-. The amount awarded towards loss of estate need not be disturbed. An amount of Rs.10,000/- is awarded towards funeral expenses and an amount of Rs.20,000/- towards loss of love and affection to the children. Thus, the award is enhanced as follows:

Head Award of the Tribunal Enhancement

Rs.	Rs.
Loss of dependency	1,72,800.00 5,89,680.00
Loss of consortium	15,000.00 50,000.00
Loss of estate	15,000.00 15,000.00
Funeral expenses -	10,000.00
Loss of love & affection -	20,000.00

Total	2,02,800.00 6,84,680.00

Thus, the compensation amount is enhanced to Rs.6,84,680/- and the award passed by the Tribunal in M.V.O.P.No.718 of 1999, dated 23.07.2003, is modified accordingly. The enhanced amount shall carry interest at 9% per annum from the date of petition till the date of realization.

The appeal is, accordingly, allowed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

01.12.2015

VS

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