

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.484 of 2006

JUDGMENT:

This appeal is arising out of the award and decree dated 21.07.2005 passed in O.P.No.187 of 1998 by the Chairman, Motor Accidents Claims Tribunal (Additional District Judge), Anantapur (for short, the Tribunal), awarding compensation of Rs.1,36,500/- on account of the death of Varimadugu Narayana Reddy in a motor vehicle accident occurred on 27.02.1998.

2. Aggrieved by the impugned award, respondent No.3, wife of the deceased, filed the present appeal for enhancement of her share of compensation in the award granted by the Tribunal in O.P.No.187 of 1998.

3. Originally O.P.No.187 of 1998 was filed by the first petitioner, the wife, second and third petitioners, the parents of the deceased, claiming compensation of Rs.2,28,000/- on account of the death of Varimadugu Narayana Reddy in a motor vehicle accident. After filing the said OP, I.A.No.1699 of 2003 was filed by the parents of the deceased, and orders were passed on 27.10.2003, transposing the first petitioner, who is wife of the deceased, as the third respondent in O.P.No.187 of 1998. The Tribunal, on consideration of the evidence, awarded 1,36,500/- and apportioned them into three shares. Two shares were allotted @ Rs.65,000/- each to the parents of the deceased and one share @ Rs.8,500/- was allotted to the wife. Aggrieved by the order of the Tribunal awarding Rs.8,500/-, this appeal has been preferred by the wife.

4. The Tribunal, on consideration of the evidence on record, has held that the wife had remarried after the death of her husband. The Tribunal based its findings on the allowing of the petition filed for transposing the wife as third respondent in the said OP. On consideration of those facts, the Tribunal awarded compensation to the wife for the period from the date of death of her husband and her remarriage, by placing reliance on a decision of this Court in **United India Insurance Company Limited, Kurnool v. Eda Anjanamma**¹.

5. The brief facts of the petition are as follows:

The deceased married the first petitioner Varimadugu Rama Devi one and half year prior to his death. By the date of his death, she was pregnant by eight months. Therefore, she claimed compensation on account of death of her husband. On 27.02.1998, while the deceased was going in a tractor bearing No.AP02E 2773, the driver of the tractor had driven it in a rash and negligent manner, and the tractor fell into a ditch and the deceased also fell down from the vehicle, and died on the spot. The police registered a case in Crime No.30/1998 under Section 304-A IPC. The claimants, being dependants of the deceased, claimed compensation of Rs.2,28,000/- against the first respondent, owner of the vehicle, and the second respondent, the insurer of the crime vehicle. The first respondent remained *ex parte*. The second respondent, insurance company, filed its written statement denying the rash and negligent driving on the part of the driver of the tractor. It is stated that the deceased Varimadugu Narayana Reddy traveled in the tractor as a hamali, as an unauthorized

¹ 2003 (2) An.W.R. 608

passenger, as such, the second respondent is not liable to pay any compensation on account of his death. It is further stated that the claim of compensation is highly excessive. The Tribunal, on consideration of the evidence of P.Ws.1 and 2, the documents Exs.A.1 to A.7 and R.Ws.1 and 2 and the documents Exs.B.1 and B.2, awarded compensation of Rs.1,36,500/- as against their claim of Rs.2,28,000/-. The dispute raised in this appeal is only with regard to the quantum of compensation entitled by the third respondent.

6. Heard the arguments of Sri K.V.Subba Reddy, learned counsel for the appellant, Sri Chetluru Srinivas, learned counsel for respondents 1 and 2 and Sri S.Agastya Sarma, learned counsel for respondent No.4.

7. Learned counsel for the appellant mainly contended that the appellant had denied her second marriage after the death of her husband. There is no evidence on record to show that she married again after the death of her husband. Therefore, she is entitled for compensation on account of death of her husband in the motor accident.

8. Learned counsel for fourth respondent, insurance company, argued that the appellant had remarried after the death of her husband, as such, she is no longer a dependant on the income of the deceased, and therefore, she is not entitled for any compensation. Reliance was placed on a decision of this Court in **Eda Anjanamma's** case (1 supra) and submitted that all the rights of a widow ceases as the legal representative of the deceased, and she is not entitled for loss of dependency, after her remarriage.

9. The dispute raised by the appellant is only in respect of her entitlement of share in the compensation awarded by the Tribunal, In fact, the Tribunal has awarded compensation only to claimant Nos.2 and 3, who are parents of the deceased @ Rs.64,000/- each and awarded Rs.8,500/- to the wife, who is the appellant herein, as she had remarried after the death of her husband.

10. Learned counsel for the appellant submitted that respondent Nos.1 and 2 have not produced any evidence to show that the appellant had married one Thippa Reddy and living with him. The Tribunal basing on the orders passed in I.A.No.1699 of 2002 seeking permission to transpose claimant No.1 as respondent No.3 in the OP alleging that she married one Thippa Reddy, allowed the petition. In Ex.A.7, claimant No.1, Rama Devi described herself as wife of late Varimadugu Narayana Reddy. She gave herself her residential address as she is residing at B.Yaler Village, Atmakur Mandal, Anantapur District. It is further observed by the Tribunal that she admitted that while she was examining as R.W.1, she struck off the word "B.Yaleru Village, Atmakur Mandal". The Tribunal, basing on the paper publication, which shows the address of claimant No.1 as "Rama Devi, W/o. Thippa Reddy, B.Yaler Village, Atmakur Mandal, Anantapur District", has held that she got married to one Thippa Reddy and residing with him in B.Yaler Village, Atmakur Mandal, Anantapur District. The evidences relied on by the Tribunal is that of Ex.A.7, the office copy of chief affidavit of R.W.1 and the alleged paper publication. The said paper publication is not marked in this case as an exhibit. Therefore, the reliance placed by the Tribunal on the paper publication cannot be considered as the authentic evidence. On

the other hand, merely because there is a paper publication showing Rama Devi as wife of somebody, that is not sufficient proof of her marriage. Claimant Nos.2 and 3 have to produce the evidence to show that she married Thippa Reddy and living with him. The denial by claimant No.1 that she married Thippa Reddy, the burden shifts to claimant Nos.2 and 3 to prove that she married Thippa Reddy. Except paper publication, wherein the address was shown as “Rama Devi, W/o. Thippa Reddy, B.Yaler Village, Atmakur Mandal, Anantapur District”, there is no authentic proof of the marriage of claimant No.1 with said Thippa Reddy. Therefore, the finding of the Tribunal that she married Thippa Reddy does not appear to be based on proper legal evidence.

11. Learned counsel for appellant/claimant No.1 placed reliance on a decision of the Madhya Pradesh High Court at Jabalpur in **Pramila v. Sarvar Khan**², wherein it was held that “even the widow is remarried her entitlement to compensation settled on the death of her husband, she has absolute right to compensation, which should not be influenced by the fact of her remarriage. Reliance was placed on another decision of the Madhya Pradesh High Court, Gwalior Bench in **Rukmani Bai v. Prahlad Singh**³, wherein it was held that “even when the widow remarried after lapse of some time, she is still entitled for the compensation.”

12. As against those decisions, learned counsel for the fourth respondent placed reliance on a decision of this Court in **Eda Anjanamma**’s case (1 supra), wherein it was held that “all rights

² 2003 ACJ 542

³ 2003 ACJ 461

and interests of a widow in her deceased husband's property shall cease upon her remarriage and shall be determined as if she had then died, and she ceases to be a legal representative of the first husband on her remarriage."

13. The Tribunal, basing on **Eda Anjanamma's** case (1 supra), has come to the conclusion that the appellant is not entitled for any compensation, if she had remarried after the death of her husband.

14. Learned counsel for the appellant basing on **Pramila's** case (2 supra) and **Rukmani Bai's** case (3 supra), contended that the death of the deceased was accidental, and the wife of the deceased had no role in it. After the death of the husband, she has to live alone throughout her life, if she does not marry. It is advisable that she has to marry to have a peaceful life. The remarriage after the death of husband of a woman in an accident is not a bar under any law. In the above two decisions, it was held that the wife of the deceased, if remarries, is entitled to claim compensation as a dependant. It was further held in those decisions that in that situation, she is entitled to some per cent of compensation along with other legal representatives.

15. The contentions of the learned counsel for the appellant, in the light of the above decisions, are quite reasonable. After the death of husband, a woman may or may not contract another marriage. As she is not barred by any law to contract marriage and that marriage may not come in the way of her claiming compensation on account of the death of her husband. In **Eda Anjanamma's** case (1 supra), it was held that the widow is entitled

for compensation from the date of death till the date of her remarriage. I respectfully disagree with this proposition. The reasons are being that the widow has lost her husband which has forced her to contract another marriage. There is no bar of a widow remarrying after the death of her husband. It is in the interest of the widow that her marriage has to be accepted due to the unfortunate death of her husband. The said fact has been clearly highlighted in **Pramila's** case (2 supra). The dependency and the meaning of legal representative have been explained in that decision.

16. In the above case, it has been clearly explained that the compensation was being awarded for the loss sustained by the legal representatives of the deceased. The legal representatives are entitled to compensation on the occurrence of the death of deceased in an accident. In the instant case, the appellant is the wife who remarried after the accident. She cannot be found fault with her remarriage to deprive her dependency. If her husband was alive, there was no necessity for her to go for another marriage. Since her husband died, she was forced to marry another. The compensation is being awarded for the suffering and hardship undergone by either of the spouse in the case of death of one of them. The compensation towards loss of dependency would definitely to be paid to the person who suffered hardship. This is a case of death occurred in an accident which is not contemplated by either of the parties.

17. In the event of death of husband, wife is naturally entitled to the estate of her husband as one of the sharer. The compensation awarded on account of the death of her husband would also be an

estate for which the wife is having entitlement as a legal heir. No doubt, after the remarriage, her relationship would be broken with the deceased husband ordinarily, whereas in a case of accidental death, as she has suffered loss of husband and she had to marry again, her status has been disturbed and she has faced hardship. Therefore, she is entitled for claiming compensation on account of the death of her husband, even though she contracted another marriage.

18. It is the contention of the appellant that the appellant had not remarried and there is no evidence on record to show that she married Thippa Reddy.

19. The finding of the Tribunal and the material on record is otherwise, it clearly shows that the appellant had remarried after the death of her husband. Even if she remarried after the death of her husband, she is entitled to claim compensation in view of the ratio laid down in **Pramila's** case (2 supra) and **Rukmani Bai's** case (3 supra). It is pertinent to note that as per Section 5 of the Hindu Marriage Act, 1955, a valid marriage subsists under certain conditions. Section 5 of the Hindu Marriage Act reads as under:

“5. Conditions for a Hindu marriage:-

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—

- (i) neither party has a spouse living at the time of the marriage;
- (ii) at the time of the marriage, neither party—
 - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - (c) has been subject to recurrent attacks of insanity.
- (iii) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.”

20. It is settled principle that a vested right will not divest. The fact that she was the wife of deceased on the date of accidental death and entitled as wife for compensation are not disputed. The subsequent marriage no way disentitles the vested right. Further had he been alive the question of her seeking for a compensation to the rest of her life doesn't arise. In fact, she is entitled for the loss of dependency, loss of consortium, loss of estate, funeral expenses, etc. The Tribunal has not awarded any of them except loss of dependency. The subsequent marriage cannot be considered for disentitlement for consortium or other compensation which she is legally entitled as a legal representative of the deceased.

21. As a matter of fact, the husband of the deceased died, and therefore, she can contract a marriage and it becomes a valid marriage under Section 5(1) of the Hindu Marriage Act. Therefore, the appellant can validly marry after the death of her husband. There is no dispute for the said proposition of law in view of Section 5 of the Hindu Marriage Act. Since she married, as her husband died at least she is entitled for consortium and other compensation for she had lived with him till his death.

22. I am of the considered view that the Tribunal had gone wrong in awarding compensation by placing reliance of the decision of this Court in **Eda Anjanamma's** case (1 supra). The

facts of this case are altogether different from the facts of the said case.

23. In the instant case, the date of marriage of the appellant is not available on record. The Tribunal presumed that she married Thippa Reddy and awarded compensation from the date of death till the date of the publication appeared in the newspaper. The findings of the Tribunal in this regard are not acceptable for the reason that the date of marriage is not proved by any cogent and consistent evidence. On the other hand, the appellant had denied her remarriage with Thippa Reddy. Therefore, the findings of the Tribunal in awarding Rs.8,500/- towards the share of the appellant are highly arbitrary.

24. In **Eda Anjanamma (1 supra)**, this Court has relied on a catena of decisions both for and against the proposition of law that a widow is entitled for claiming compensation after the death of her husband even though she is remarried. On consideration of the decisions, this Court came to the conclusion that a widow ceases to be a legal representative of the deceased and as his dependent and by arriving at that conclusion, it was also observed that it would be appropriate if the loss of dependency is confined to the period from the date of accident till the date of remarriage of the widow. No doubt, the above decision can be followed even in this case, but in view of the facts and circumstances of the case, the ratio of the compensation has to be fixed.

25. In the instant case, the Tribunal has awarded the following compensation in the following ratio:

S.No.	Head	2 nd petitioner	3 rd petitioner	3 rd respondent
1.	Loss of earning	59,000	58,000	8,500
2.	Mental agony and sufferance	5,000	5,000	--
3.	Funeral expenses	--	1,000	--
	Total	64,000	64,000	8,500

26. The above tabular format clearly shows that the 2nd petitioner and the 3rd petitioner were awarded compensation for loss of earnings and mental agony and the 3rd petitioner was additionally awarded Rs.1,000/- towards funeral expenses. As far as 3rd respondent-appellant is concerned, it is calculated strangely taking 1/7th of the share of one of the petitioners which came to Rs.8,500/-. The Tribunal also held that the appellant being remarried is not entitled for amount of consortium or loss of estate. This part of the award appears to be highly unreasonable. No doubt, as per the ratio laid down in the above decisions, the widow of the deceased is entitled to claim compensation from the date of death of her husband till the date of her remarriage, but she is entitled for consortium as she lost her love and affection of her husband who died in the accident and that is why she is forced to contract another marriage.

27. In view of the ratio laid down in **Pramila's** case (2 supra) and **Rukmani Bai's** case (3 supra), I am of the considered view that the appellant is entitled for compensation along with the parents of the deceased. The appellant is the wife and claimant Nos.1 and 3 are

the parents of the deceased. The Tribunal, on consideration of the evidence, partly allowed OP by granting an amount of Rs.1,36,500/- with proportionate costs and interest @ 9% per annum, dismissing the rest of the claim. Out of Rs.1,36,500/-, claimant Nos.2 and 3 were awarded an amount of Rs.64,000/- each and the appellant was awarded only a meager amount of Rs.8,500/-. The Tribunal has taken into consideration the period of one year during which the appellant remained as widow, and taking into consideration out of seven years of her marital life, awarded 1/7th of the amount of total compensation of Rs.59,000/- and arrived at an amount of Rs.8,500/-. The Tribunal even refused to award any amount towards consortium and loss of estate, as she married again. The calculation made by the Tribunal does not appear to be proper. In view of the facts of this case, and the decision in **Pramila's** case (2 supra), I am of the view that the wife of the deceased and the parents of the deceased are entitled for the compensation equally.

28. Therefore, in the background of this case, this Court is of the considered view that she is entitled to equal share as that of the parents of the deceased. On dividing the total compensation of Rs.1,36,500/- into three shares, the share of the appellant comes to Rs.45,500/-. The respondents 1 and 2 who are the parents of the deceased have been served with notices, but none appeared on their behalf to contest the matter.

29. In the result, the appeal is allowed, and the order passed by the Tribunal in O.P.No.187 of 1998 is modified awarding 1/3rd share out of total amount of compensation to the appellant, and the remaining two shares shall be allotted to respondent Nos.1 and

2, who are the mother and the father of the deceased. The rest of the award shall be intact. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending shall stand closed.

GUDISEVA SHYAM PRASAD, J

Date: 16.06.2017
TJMR

