

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 876 of 2010

JUDGMENT:

This appeal is arising out of the order dated 19.02.2010 passed in O.P. No.39 of 2010 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge, Nalgonda.

2. At the outset, the learned counsel for the appellants submitted that the first appellant-first petitioner-Batlagunta Venkataiah aged about 70 years, received injuries in a motor vehicle accident, and filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.80,000/- on account of the injuries sustained by him. During the pendency of the petition, the first petitioner died. I.A.No.2083 of 208 was filed by the legal heirs of the first petitioner who is reported to be dead. The said petition was allowed and the legal representatives of the deceased i.e. petitioners 2 to 6 were brought on record.

3. The brief facts of the petition filed before the Tribunal are that the first petitioner while crossing the road at Phylon Colony was being dashed by a CT-100 motorcycle bearing No. AP-28-BB-9428. The first petitioner sustained grievous injuries in the accident and was admitted in KN Hospital, Nagarjunasagar. The Police registered a case in Crime No.234 of 2005 under Section 337 of IPC against the driver of the crime vehicle. The first petitioner was aged about 70 years and was doing chicken business and getting income of Rs.4,000/- per month. The petitioner No.1 incurred medical expenditure more than Rs.40,000/- for treatment and extra nourishment due to the injuries suffered by him. The petitioner No.1 has suffered partial disablement. Therefore, he claimed compensation of Rs.80,000/-. First respondent who is the owner of the crime vehicle

remained *ex parte*. 2nd respondent filed counter denying the manner in which the accident occurred and also denied it's liability and contended that the claim of the petitioners is highly excessive. The Tribunal, on consideration of the evidence, awarded compensation of Rs.17,000/- on account of the injuries sustained by the petitioner No.1. The compensation was awarded only to the second petitioner who is the wife of the first petitioner/deceased.

4. Heard the arguments of the learned counsel for the petitioners and the respondents.

5. The point that arises for consideration in this appeal is:

Whether the appellants are entitled for enhancement of compensation?

6. It is submitted by the learned counsel appearing for the appellants that the compensation awarded by the Tribunal is inadequate. The medical evidence and the injuries suffered by the petitioner No.1 were not appreciated by the Tribunal and therefore, sought for enhancement of compensation.

7. Learned counsel for the respondent-insurance company submits that the first petitioner died during the pendency of the petition. The petitioner No.1 has made claim for the injuries received by him in the accident. Relying on the principle 'doctrine action *personalis moritur cum persona*', the learned counsel for the insurance company contended that the appellants are not entitled to claim any compensation much less for enhancement of compensation, after the death of the injured.

8. Learned counsel for the appellants placed reliance on the judgment of this Court rendered in the case of **RELIANCE GENERAL**

INSURANCE COMPANY LTD. V. B.MALLAIHA (DIED) AND OTHERS¹ wherein it was held in para 17 as under:

“17. It may be recalled that this is not a case laid by the dependants of the deceased claiming compensation, inter alia, towards the pain and sufferance for the injuries sustained by the deceased. The injured was alive by the time he made the claim. He sought compensation for pain and sufferance. The petition was maintainable when the petitioner No.1 was alive. I am afraid in view of the operation of the doctrine action personalis moritur cum persona read with section 306 of the Indian Succession Act, 1925, the claim of pain and sufferance cannot be rejected on the ground that the petitioner No.1 who sustained injuries is no more. The claim certainly is maintainable by the petitioner No.1 and consequently, by the petitioner Nos.2 and 3 on the demise of the petitioner No.1. Where the trial Court awarded compensation at Rs.10,000 towards pain and sufferance after due consideration, there are no grounds to interfere with the award passed by the trial Court. I, therefore, see no merits in this appeal. This appeal consequently is dismissed. No costs.”

9. It is observed in the judgment that the injured was alive by the time he made the claim. He sought compensation for pain and suffering. It is observed that the operation of the doctrine action personalis moritur cum persona is not applicable to this case as it has to be read with section 306 of the Indian Succession Act, 1925.

10. In view of the above decision, it is obvious that the cause of action was alive during the life time of the petitioner No.1 as he has filed the O.P. during his life time. The cause of action does not die with petitioner No.1.

¹ 2014 ACJ 930

11. The learned counsel also placed reliance on a decision reported in BHAGWATI BAI AND ANOTHER v. BABLU AND OTHERS², wherein at para 15, it is held asunder:

“A claim for personal injury filed under Section 166 of the Motor Vehicles Act 1988 would abate on the death of the claimant and would not survive to his legal representatives except as regards the claim for pecuniary loss to the estate of the claimant. The matter will now be placed before the Division Bench for assessment of the pecuniary loss caused to the estate of the deceased Pancham Singh on account of the motor accident suffered by him on the basis of pleadings and proof before the Tribunal/court.”

12. The above decision clearly indicates that a claim for personal injury would abate on account of the death of the claimant and it would not survive to his legal representatives except as regards the claim for pecuniary loss to the estate of the claimant. Therefore, it is clear to the effect that the legal heirs of the deceased are entitled for loss of estate.

13. It is appropriate to refer to Section 155 of the Motor Vehicles Act. Section 155 of the Act reads as under:

“155. Effect of death on certain causes of action.—Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925 (39 of 1925), the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

14. In a decision reported in SURESH v. LOKESHAGAUDA³ it was observed as under:

² 2007 ACJ 682

“Abatement of the appeal against the driver on account of his death will not effect the maintainability of appeal in view of the fact that substantive responsibility of payment of compensation awarded is of owner of vehicle and along with that it will be of Insurance Company. Even if the insured (Owner) would have died cause of action for claim or enhancement of claim against the estate of insured and against the insurance company would have survived under Section 155 of the Act. “

15. In view of the above decisions, and the legal position, no doubt, the case abates against the injured in the motor vehicle accident in view of his death during the pendency of the petition. But, however, Under Section 306 of the Indian Succession Act, his legal representatives would be entitled for the claims relating to the pecuniary damages like i) medical bills, ii) medical treatment, iii) transport charges, iv) extra nourishment, attendant chargers and v) loss of earnings.

16. It is submitted that the Tribunal has awarded Rs.15,000/- for one grievous injury and Rs.2,000/- for one simple injury suffered by the first petitioner. No compensation was awarded under various other heads like medical bills, ii) medical treatment, iii) transport charges, iv) extra nourishment, attendant charges and v) loss of earnings and therefore, sought for grant of compensation under these heads i.e. pecuniary damages.

17. The Tribunal has rejected to grant any amount towards medical expenses and treatment as the petitioner No.1 did not examine the medical officer to prove his case.

18. No doubt, basing on the evidence on record, it is obvious that the petitioner No.1 has received one grievous injury and one simple injury and underwent treatment. Since the Tribunal has not specified whether

³ AIR 1998 Kant.17

Rs.17,000/- was awarded only for the injuries or even it included towards the treatment also. The appellants have not produced any evidence before the Tribunal with regard to proof of medical expenses by examining the medical officer or any other witness and that is why the medical claim of the petitioner No.1 was not accepted by the Tribunal.

19. It is submitted that the petitioner No.1 has claimed Rs.40,000/- towards medical expenses and filed some medical bills under Ex.A-4. But, the Tribunal did not award any amount on the ground that the medical officer is not examined.

20. The petitioner No.1 sustained one grievous injury and one simple injury and had undergone treatment. Further, some times, it is not possible for the claimants to file each and every medical bill.

21. Considering the injuries suffered by the petitioner No.1, it is just and proper to award an amount of Rs.20,000/- towards the medical expenses. Accordingly, Rs.20,000/- is awarded to the petitioner No.1 towards the medical expenses.

22. Further, the Tribunal ought to have awarded compensation towards loss of earnings as claimed by petitioners of Rs.8,000/- which can be awarded. Therefore, Rs.8,000/- is awarded towards loss of earnings.

23. As far as the extra nourishment, attendant charges and transport charges are concerned, the Tribunal did not award any amount. Therefore, an amount of Rs.17,000/- i.e. Rs.7,000/- towards attendant charges, Rs.5,000/- towards extra nourishment and Rs.5,000/- towards transport charges is awarded.

24. The following is the tabular form showing the amount of compensation awarded by the Tribunal and enhanced by this Court, under the relevant heads:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
1.	For one grievous injury	Rs.15,000/-	---
2.	For one simple injury	Rs. 2,000/-	---
3.	Loss of earnings	--	Rs. 8,000/-
4.	Medical expenses	--	Rs. 20,000/-
5.	Attendant charges	--	Rs. 7,000/-
6.	Extra nourishment	--	Rs. 5,000/-
7.	Transport charges	--	Rs. 5,000/-
	TOTAL	Rs.17,000/-	Rs.45,000/-

25. In the result, the appeal is partly allowed. The compensation awarded by the Tribunal is modified and enhanced from Rs.17,000/- to Rs.45,000/- (Rupees forty five thousands only) with interest at 7.5% per annum from the date of the petition till realization with proportionate costs. The respondents are directed to deposit the balance amount before the Tribunal, within two months from the date of this order. On such deposit, the appellant No.2/petitioner No.2 who is the wife of the petitioner No.1/deceased is permitted to withdraw the entire amount.

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

G. SHYAM PRASAD, J

Date:22.02.2017.
ccm

HON'BLE SRI JUSTICE G. SHYAM PRASAD



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