

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.NO.490 OF 2011

JUDGMENT:

Appellant-Insurance Company filed this appeal against the judgment and decree dated 06.09.2010 passed in M.O.P.No.1034 of 2009 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Visakhapatnam, granting an amount of Rs.2,90,000/- towards compensation against the claim of Rs.4,00,000/- for the death of the deceased-Ammaji in a motor vehicle accident occurred on 30.08.2009.

The respondents-claimants, being the children of the deceased Ammaji, wife of late Appanna, filed claim petition under Section 166 of the Motor Vehicles Act, 1988, alleging that on 30.08.2009, while the deceased was returning from a temple on N.H.5, a motor cycle bearing No.AP 31 A X 9186 driven by its driver in a rash and negligent manner dashed her from her rear side. She succumbed to injuries on the night of 31.08.2009 while undergoing treatment in K.G.Hospital, Visakhapatnam. Crime No.369 of 2009 was registered under Section 304-A IPC on the file of the Pothinamallayypalem Police Station. Deceased was aged about 60 years at the time of her death and she was earning an amount of Rs.4,000/- per month by doing labour work. She used to spend the entire amount to the family. On account of her death, the respondents-claimants have lost their love and affection and filed the claim petition against the respondents-claimants claiming compensation of Rs.4,00,000/-.

The fifth respondent herein, the owner of the offending vehicle, remained *ex parte* before the Tribunal.

The appellant-Insurance Company filed a counter before the Tribunal denying the averments made in the claim petition, more

particularly, the income and age of the deceased and also its liability to pay the compensation. It was stated that there was no valid driving licence to the driver of the offending vehicle at the time of the accident. It was also stated that the respondents-claimants did not produce the particulars of the insurance policy, and as such, it denied that the offending vehicle was insured with it. It was further stated that the claim made by the respondents-claimants was highly excessive.

On the basis of the aforestated pleadings, the Tribunal framed the following issues for its consideration:

- 1) 'Whether the death of the deceased, by name, Ithi Ammaji, occurred on account of the rash and negligent driving of the vehicle bearing No.AP 31 AX 9186 by its driver?
- 2) Whether the petitioners are entitled to compensation?
- 3) To what relief?

During the course of trial, PWs.1 and 2 were examined and Exs.A.1 to A.8 were marked on behalf of the claimants and Ex.B.1, a copy of the insurance policy, was marked on behalf of the insurance company. However, no oral evidence was adduced on its behalf.

The Tribunal, based on the evidence of P.W.2, who is an eye witness to the accident, coupled with Exs.A.1 and A.5, came to the conclusion that the accident has occurred only due to the rash and negligent driving of the offending vehicle by its driver and dashed against the deceased-Ammaji behind her back and hence, she fell down and sustained injuries and she succumbed to the injuries on 31.08.2008 while undergoing treatment in the hospital. The first issue was accordingly answered in favour of the respondents-claimants.

However, the Tribunal disbelieved the version of P.Ws.1 and 2 with regard to the income of the deceased as no acceptable legal evidence was placed before it in proof thereof. The Tribunal, having taken into consideration the decision of this Court in GOTLA BRAHMARAMBA v. B.SATYANARAYANA¹, to the effect that even a household lady renders multifarious services to the family and services of such woman cannot be less estimated, and the contention of the respondents-claimants that they had lost their motherly affection on account of the sudden demise of their mother, estimated the notional income of the deceased at Rs.3,000/- per month and Rs.36,000/- per annum. Relevant portion of the judgment reads as under:

‘Mother and house wife died in a motor vehicle accident. Though she is not an earning member, house in the age group of 34 to 59 years performs several duties and renders multifarious services to the household. A modest estimate of her services should be Rs.3,000/- per month and Rs.36,000/- per annum. Compensation is awarded accordingly for death of mother.’

Taking into account the age of the deceased at the time of her death, the Tribunal applied multiplier ‘8’, and in all, Rs.2,90,000/- along with proportionate costs and interest at 7.5% per annum was awarded as compensation and apportioned the same between the respondents therein.

Learned counsel for the appellant-insurance company would contend that the Tribunal has erred in holding that the driver of the offending vehicle has driven the vehicle in rash and negligent manner. Learned counsel would further contend that the Tribunal erred in taking the monthly income of the deceased at Rs.3,000/- as she was aged about 60 years at the time of the incident and moreover, the claimants are not

¹ 2003 (6) ALD (NOC) 19

depending on the income of the deceased. Learned counsel would further contend that the Tribunal failed to deduct one-third of the total income towards personal expenses of the deceased and it ought to have granted interest @ 6% per annum as per the judgment of the Supreme Court in *SARLA VERMA v. DELHI TRANSPORT CORPORATION*².

Having regard to the facts and circumstances of the case, in the considered view of this Court, the Tribunal, considering the evidence before it, came to the right conclusion that merely because the deceased was a non-earning member of the family itself will not disentitle the respondents-claimants to claim just and reasonable compensation to which they are legally entitled to, as they lost the services of their mother and motherly affection. Even, as a household lady she was rendering multifarious services to the family and the services of such woman cannot be less estimated. The Tribunal took the monthly income of the deceased at Rs.3,000/- as held by the Supreme Court in *GOTLA BRAHMARAMBA's* case (1 supra). However, her services cannot be calculated in terms of money and even Rs.3,000/- is on lower side and the respondents-claimants are entitled to Rs.2,90,000/- towards compensation along with proportionate costs and interest @7.5% per annum. Therefore, this Court finds no illegality or irregularity in the award of compensation by the Tribunal warranting interference by this Court.

The appeal is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

M.GANGA RAO,J

Date:29.10.2018
GJ

² (2009) 6 SCC 121

