APHC010041722009

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

Bench
Sr.No:-63
[3584]

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 593 of 2009

Dasari Srihari Rao and Others ...Appellant(s)

Vs.

Mahamad Yusaf and Others ...Respondent(s)

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CORAM : THE CHIEF JUSTICE LISA GILL
SRI JUSTICE CHALLA GUNARANJAN

DATE : 23th July 2026

Present:

Advocate for Appellants: MR. A. RAJENDRA BABU

Advocate(s) for Respondent(s): MRS.S A V RATNAM,
MR.K KISHOR KUMAR REDDY,
MR.VENKATESWARLU PALADUGU

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JUDGMENT: (per Hon'ble Sri Justice Challa Gunaranjan)

Present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, assailing the judgment, dated 31.05.2008, in M.V.O.P.No.221 of 2004, passed by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Guntur (for short, "the Tribunal"), by which the claim of appellants/claimants came to be rejected.

2. For the sake of convenience, the parties hereinafter are referred to as they were arrayed in the M.V.O.P. before the Tribunal.

3. The facts relevant for disposal of the appeal are set out as under:

(a) On account of collision of two vehicles, i.e., Tata Indica car bearing registration No.AP 9AD 235 and Ambassador car bearing registration No.AP 25 U 5005, the inmate of Tata Indica car died. 1st claimant is husband of the deceased and remaining claimants are the children. The accident occurred on 07.08.2003 while the claimants and the deceased were travelling in Tata Indica car from Hyderabad to Basara. On the way near Daggi forest area of National Highway No.7, the Ambassador car came in opposite direction in a rash and negligent manner in high speed, stated to have dashed against Tata Indica car, thus, the deceased succumbed on the spot on account of grievous injuries. Even the driver of Tata Indica car died at the hospital later while undergoing treatment. The incident was reported to police, who registered Crime No.65 of 2003 for the offence punishable under Section 304-A of IPC against the driver of Tata Indica car.

(b) The deceased was aged about 52 years and was earning Rs.7,00,000 per annum being proprietor of Sri Raja Enterprises which

was engaged in the business of transport. Therefore, husband and children of the deceased have laid claim for compensation to the tune of ₹ 40,00,000.

4. 1st respondent owner of Ambassador car remained *ex parte*. 2nd respondent, who has been arrayed as owner of Tata Indica Car, did not contest the claim and thereby was set *ex parte*.

5. 3rd respondent, insurer of Indica Car, filed written statement, *inter alia*, pleading that the Tribunal did not have territorial jurisdiction to entertain the claim. Further, the driver of Indica car was not having driving license, and there was clear violation of terms of policy. Further, the claimants, being legal heirs of insured, owner of the Tata Indica car, were not entitled for compensation. Further, even the quantum of compensation also has been disputed.

6. 4th respondent, insurer of Ambassador car, filed written statement stating that the accident has occurred only on account of rash and negligent driving of driver of Tata Indica car, as is evident from the contents of FIR, therefore, pleaded for dismissal of claim against it.

7. Based on the aforesaid pleadings, the Tribunal has framed the following issues.

"(1) Whether the accident occurred due to rash and negligent driving of the drivers of Indica Car No. AP9AD-235 and Ambassador Car No. AP25U-5005?

(2) To what compensation the petitioners are entitled and from whom?

(3) To what relief?"

8. In support of the claim, PW1 was examined and Exs.A1 to A9 were marked. On behalf of 3rd respondent-insurer, RW1 was examined and Ex.B1 was marked. On behalf of 4th respondent, RW2 was examined and Exs.B2 to B6 were marked.

9. On appreciation of both oral and documentary evidence, the Tribunal has found that it lacked the territorial jurisdiction to entertain the claim. It also proceeded to consider the other issues. Insofar as the negligence aspect, the Tribunal has found that the accident had occurred due to rash and negligent driving of driver of Tata Indica car, but not the driver of Ambassador car. However, the Tribunal has further proceeded to determine income of the deceased and has arrived at Rs.15,000/- per annum and after deducting one third of the same, arrived at the actual contribution to the family as Rs.10,000/- per annum. The Tribunal has also taken note of the fact that an amount of Rs.2,00,000/- was received from the 3rd respondent towards personal accident claim on account of death of the deceased and that the Tata Indica car was owned by the deceased as admitted

by PW1, husband of the deceased, in the cross-examination. Ultimately, the Tribunal has come to conclusion that the claimants were not entitled for any compensation, as they were not dependents on the income of the deceased. Accordingly, the MVOP came to be dismissed. Assailing the same, the present appeal is preferred.

10. Heard. Mr. A. Rajendra Babu, learned counsel for the appellants/claimants and Mrs.S. A. V. Ratnam, learned counsel appearing for the insurer.

11. Learned counsel appearing for the appellant made the following submissions:

(i) The findings of the Tribunal with regard to territorial jurisdiction are completely perverse inasmuch as the evidence on record clearly demonstrates that the claimants were permanent residents of Guntur, which was within the territorial jurisdiction of the Tribunal. Section 166(2) of the Motor Vehicles Act clearly envisaged that the Tribunals having jurisdiction over the area in which either accident occurred, or where the claimants reside or carry on business or where defendants reside, can exercise the jurisdiction, therefore, in the present case, the permanent residence of claimants would decide the jurisdiction of the Tribunal. In support of the said

contention, the learned counsel relied on the judgment of the Hon'ble Apex Court in **Mantoo Sarkar v. Oriental Insurance Co. Ltd**.[1]

(ii) The Tribunal failed to appreciate that the accident had occurred on account of a head-on collision by Indica car and Ambassador car, which were coming in opposite direction, which itself would imply an element of contributory negligence attributable to both the drivers, therefore, the finding of the Tribunal that the accident has occurred merely because of negligence of driver of Tata Indica car is clearly perverse.

(iii) Lastly, it is contended that the Tribunal erred in finding that the claimants were not dependents on the deceased, and in support of his argument, reliance has been placed on the judgment of the Hon'ble Apex Court in **National Insurance Co. Ltd. v. Birender**[2].

12. *Per contra*, learned counsel appearing for the respondent insurer tried to support the award under challenge. She contends that though residence of claimants would determine the jurisdiction of the Tribunal, however, the same would depend on facts and circumstances of each case, based on the evidence available on record, rightly, the Tribunal has found that the claimants were residing at Hyderabad and that the accident has occurred on the way to

[1] (2009) 2 SCC 244
[2] AIR 2020 S.C. 434`

Basara, which was not within its jurisdiction and no other material evidence was brought on record to bring the claim within its territorial jurisdiction. The findings so rendered cannot be said to be perverse in any manner. She also contended that the Tribunal, on appreciation of Ex.A2 FIR and Ex.A3 panchanama of the scene of offence, Ex.B3 rough sketch of the scene of offence and Ex.B4 charge sheet, rightly, has come to conclusion that the driver of Tata Indica car had moved extreme right of the road and dashed against the Ambassador car coming on opposite direction, therefore, attributed the entire negligence to the driver of Tata Indica car, which is perfectly justified, and therefore, pleaded for dismissal of the appeal.

13. We have considered the respective submissions of the learned counsels appearing for the parties and perused the record.

14. In **Mantoo Sarkar**'s case[1], relied on by the learned counsel for the appellants, while interpreting Section 166(2) of the M.V. Act, the Hon'ble Apex Court held that though residence of claimants also determines jurisdiction of the Tribunal, what would be a residence of a person would, however, depend upon the facts situation obtained in each case. Testing the facts of present case, whether the claim falls within the territorial jurisdiction of the Tribunal, the evidence on record as adduced by the claimants needs to be appreciated.

15. The 1st claimant, husband of deceased, was working as Deputy Executive Engineer in R&B Department at Hyderabad. All the three children were also studying at Hyderabad, however, they claim to be permanent residents of Peravalipalem Village, Vemuru Mandal, Guntur District. In order to substantiate the same, PW1, who is none other than 1st claimant, filed an affidavit under Order XVIII Rule 14 CPC, asserting that they are residents of Guntur District. Further, it is asserted that on account of the employment, they had been living at Hyderabad, however, they were permanent residents of Guntur District. Except for the self-serving statement, no other piece of evidence has been placed on record otherwise. The vehicle, which admittedly was owned by deceased, i.e., Tata Indica Car, bearing registration No.AP9AD 235, was registered at Hyderabad and even the same was insured at Hyderabad. Admittedly, the accident occurred outside the territorial jurisdiction of the Tribunal. None of the respondents resided within the territorial jurisdiction of the Tribunal. Thus, looking from any of the aforesaid perspectives, the claimants really do not fit in within the parameters of Section 166(2) of the M.V. Act to maintain a claim before the present Tribunal. The Tribunal has rightly decided the issue against the claimants and, in our considered opinion, does not call for any interference at all.

16. In normal course, we would have rested case having decided on jurisdiction, however, since the Tribunal has also gone into the issue of quantum of compensation and that even learned counsel appearing for appellants addressed this Court on the said aspect, we are compelled to deal with the same.

17. Coming to the next submission of learned counsel for the appellants, the crucial evidence on record dealing with negligence aspect needs to be looked into. Ex.A2 FIR, which was registered upon the complaint made by PW1, directs the negligence towards the driver of Tata Indica car, who has been arrayed as accused for the offence punishable under Section 304-A of IPC. Ex.A3 Panchadama of the scene of offence also clearly mentions that the driver of Tata Indica car had come in high speed and caused the accident. Most importantly, Ex.P3, which is panchanama of the scene of offence, clearly indicates that the Tata Indica car, by deviating from its path, has moved in opposite way and dashed against the Ambassador car. Ex.A4 charge sheet also eventually confirms the same. On appreciation of above evidence, the Tribunal has come to conclusion that the driver of the Tata Indica car was rash and negligent in driving the car, which resulted in the accident. Though learned counsel for the appellants contended that every head-on collision invariably

should lead to contributory negligence on the part of drivers involved in the accident, we are not in agreement. Every case of negligence, even if it were to be a head-on collision, has to be tested based on the facts and circumstances culminating in the accident and with reference to the evidence available on record. Therefore, the finding of Tribunal on this aspect needs no interference.

18. Lastly, though learned counsel appearing for the appellants has contended that the Tribunal was not right in holding that as claimants are not dependents upon the income of the deceased, they are disentitled for compensation, in view of our conclusions arrived at on preceding two issues, we need not delve into this issue at all.

19. We, therefore, find any merit in the appeal and accordingly, the same stands dismissed. No order as to costs.

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

LISA GILL, CJ **CHALLA GUNARANJAN, J.**

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