

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.2 OF 2013

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, challenging the order dated 26.11.2012 passed in M.V.O.P.No.295 of 2011 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-X Additional District Judge (Fast Track Court), Visakhapatnam at Anakapalle, wherein and whereby the Tribunal dismissed the petition claiming compensation of Rs.1,50,000/- for the death of the daughter of the claimants (Adapa Sravanthi).

2. The parties to this appeal will hereinafter be referred to as they are arrayed before the Tribunal, to avoid confusion.

3. The facts leading to filing of the appeal are briefly as follows: On 06.12.2005, at about 01.00 p.m., Adapa Sravanthi was proceeding on her cycle from their house at Makavaram to her uncle's house at Narasapuram. When she reached near Thallapalem junction, the driver of lorry bearing No.AP 24V 4419 had driven the same in a rash and negligent manner and dashed against the cycle of Sravanthi. The Station House Officer, Kasimkota Police Station registered a case in Crime No.151 of 2005 under Section 3337 IPC against the driver of the lorry. Subsequently the Section of law was altered from 337 to 338 IPC. In the said accident, Sravanthi sustained injuries on various parts of the body. The petitioners spent Rs.65,000/- towards medicines and treatment of their daughter (Sravanthi). Adapa Sravanthi died due to the injuries sustained in the accident. By the time of the accident, Sravanthi was aged about 18 years. The lorry bearing No.AP 24V 4419, which belongs to the first respondent, was insured with the second respondent-company as on the date of the accident. Hence, the petition claiming compensation of Rs.1,50,000/- from the respondent Nos.1 and 2 jointly and severally with interest and costs.

4. The first respondent remained *ex parte*. The second respondent filed counter denying all the averments made in the petition including the manner of the accident and the cause of death of Adapa Sravanthi. The petitioners are not entitled to compensation unless they establish that the driver of the lorry bearing No.AP 24V 4419 was having valid and effective driving licence as on the date of the accident. The petitioners filed compensation petition before the permanent Lok Adalat, Visakhapatnam vide permanent Lok Adalat Case No.1622 of 2007. The Hon'ble Chairman passed order 29.3.2008 closing Case No.1622 of 2007, as the petitioners failed to attend before the Forum for settlement or trial of the case. Therefore, the present petition is not maintainable in view of closure of previous petition claiming compensation before the permanent Lok Adalat, Visakhapatnam. Hence the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the deceased Adapa Sravanthi died in a motor accident occurred on 6.12.2005 due to rash and negligent driving of Vehicle bearing No.AP 24V 4419 by its driver as pleaded by petitioners?
2. Whether the petitioners are entitled for compensation? If so, to what amount and from which of the respondents?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. On behalf of the respondents, no oral evidence was adduced but Ex.B1 was marked on behalf of the second respondent.

7. On appraising the oral, documentary evidence and other material available on record, the Tribunal arrived at the conclusion that the petitioners failed to prove Adapa Sravanthi died of the injuries sustained in a road accident that occurred on 06.12.2005 and

dismissed the petition. Feeling aggrieved by the judgment and award of the Tribunal, the petitioners preferred the present appeal.

8. The learned counsel for the petitioners submitted that the Tribunal failed to consider that Adapa Sravanthi died on 23.3.2006 due to the injuries sustained by her in a motor vehicle accident that occurred on 06.12.2005. He further submitted that the Tribunal failed to appreciate the recitals of Ex.A2 (wound certificate), which clearly demonstrate that there is every possibility of death of Sravanthi due to the injuries sustained by her in the accident. He also submitted that the findings of the Tribunal are based on assumptions and presumptions. ***Per contra***, learned counsel for the second respondent submitted that the petitioners failed to establish that Adapa Sravanthi died due to the injuries sustained in the road accident that occurred on 06.12.2005. He further submitted that Sravanthi sustained only simple injuries. He also submitted that the findings recorded by the Tribunal are supported by oral and documentary evidence available on record.

9. In view of the rival contentions, the point that arises for consideration in this appeal is:

Whether Adapa Sravanthi died due to the injuries sustained by her in the motor vehicle accident that occurred on 06.12.2005?

Point:

10. To substantiate the case, the first petitioner examined herself as P.W.1 and got marked Exs.A1 to A5. P.W.2 is the eye witness to the accident. As per the testimony of P.W.1, the accident occurred due to the rash and negligent driving of the driver of lorry bearing No.AP 24V 4419 and in the said accident, her daughter sustained injuries. In the cross-examination, P.W.1 in unequivocal terms deposed that she did not witness the accident. Therefore, her testimony is no way helpful to prove the manner of the accident. As per the testimony of P.W.2, the accident occurred due to the rash and negligent driving of the driver of the lorry. His testimony further reveals that he shifted the injured to

Government Hospital, Anakapalle. The oral testimony of P.Ws.1 and 2 coupled with Exs.A1 and A3 (F.I.R and charge sheet respectively) reveals that the accident occurred due to the rash and negligent driving of the driver of the lorry.

11. In order to claim compensation, the petitioners have to establish that Adapa Sravanthi died of the injuries sustained by her in the accident that occurred on 06.12.2005. The petitioners are mainly relying on Ex.A4 (death certificate dated 25.2.2012 issued by Gram Panchayat, A.S. Peta) to prove that Sravanthi died due to the injuries sustained in the accident. A perusal of Ex.A4 reveals that Adapa Sravanthi died on 23.3.2006. It is not mentioned in Ex.A4 that Sravanthi died of injuries sustained in the road accident that occurred on 06.12.2005. As per the recitals of Ex.A2 (wound certificate), Sravanthi sustained two simple injuries and one grievous injury on her right shoulder. It is not the case of the petitioners that Sravanthi died of the grievous injury sustained on her right shoulder. If really Sravanthi died of the injuries sustained by her in the motor vehicle accident, what prevented the petitioners to report the matter to the concerned Police. The petitioners have not taken any steps to conduct post-mortem examination over the dead body of Sravanthi. If really Sravanthi died as pleaded by the petitioners, the Station House Officer, Kasimkota Police Station, who registered Crime No.151 of 2005, might have altered the Section of law from 338 to 304A IPC. A perusal of record reveals that after completion of the investigation, the Investigating Officer filed the charge sheet under Section 338 IPC (Ex.A3). The recitals of Ex.A2 (wound certificate) do not support the case of the petitioners that Sravanthi died of the injuries sustained in the accident that occurred on 06.12.2005. Adapa Sravanthi died nearly 3½ months after the accident. If really Sravanthi died of the injuries sustained in the accident, the same might have reflected in Ex.A4 (death certificate). Without establishing the nexus between the injuries

sustained by Sravanthi and cause of her death, the petitioners are not entitled to claim compensation.

12. The material placed before the Tribunal falls short to establish that Adapa Sravanthi died of the injuries sustained in a motor vehicle accident that occurred on 06.12.2005. A perusal of the record further reveals that for the reasons best known to the petitioners, they did not approach the permanent Lok Adalat, Visakhapatnam, which led to closure of Case No.1622 of 2007. All these aspects cast a cloud on the version put-forth by the petitioners. The possibility of filing of this petition taking advantage of the unfortunate death of Sravanthi cannot be ruled out completely. The Tribunal rightly considered all these aspects and held that the petitioners failed to establish that Adapa Sravanthi died of the injuries sustained in a motor vehicle accident that occurred on 06.12.2005. The findings recorded by the Tribunal are based on evidence much less legally admissible evidence. There are no grounds much less valid grounds to interfere with the well considered findings recorded by the Tribunal. The appeal lacks merits and bona fides. Accordingly, the point is answered against the petitioners.

13. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 02.09.2015.

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