

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-
M.A.C.M.A. No.1840 of 2006

JUDGMENT:

Dissatisfied with the amount of Rs.70,000/- granted as compensation by order and decree dated 28.04.2006 in M.V.O.P.No.223 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Chittoor (for short, 'the Tribunal') as against the claim for Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the instant appeal is preferred by the appellants/petitioners, being the legal heirs of the deceased-Ghouse Basha.

2. The appellants herein are the petitioners, while the respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 21.04.2001, the said Ghouse Basha, aged 45 years and earning Rs.3,000/- per month as a lorry driver, was driving lorry bearing registration No.AP 03T 2723 with a load over the Farakka main barrage between gate Nos.86-87, Anchal No.VII Gr.No.36, somehow, fell into the river-Ganges along with his lorry and he died. The petitioners, therefore, filed the instant claim seeking Rs.3,00,000/- from the respondent Nos.1 and 2, who are the owner and insurer of the said lorry.

5. The 1st respondent, owner of the accident vehicle, remained *ex parte* before the Tribunal and the 2nd respondent disputed the claim and raised various pleas besides taking a specific plea that due to

rash and negligent driving of the said Ghouse Basha, the accident has occurred, and, therefore, the petitioners are not entitled to claim any compensation.

6. Basing on the said pleadings, the Tribunal framed two issues about the responsibility for the accident. During enquiry before the Tribunal, the 2nd petitioner examined himself as P.W.1 besides examining one K.Jaleel, an eyewitness to the occurrence, as P.W.2 and marked Exs.A.1 to A.4 in order to substantiate their claim made before the Tribunal. On behalf of the contesting 2nd respondent-Insurance Company, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

7. The Tribunal, on issue No.1, given weight to the oral evidence of P.W.2, who, in fact, claimed himself to be an eyewitness to the occurrence, as he was travelling in the lorry along with the deceased, by discarding the version of P.W.2 given in Ex.A.1 recorded by the authorities concerned, which would reflect that P.W.2 was actually driving the vehicle at the relevant time and his name was mentioned as driver of the crime vehicle. Somehow, the Tribunal did not take into consideration the contents of Ex.A.1 except stating that the oral evidence of P.W.2 is believable and it must be given more weight than the contents of the F.I.R. Ex.A.1, irrespective of dealing with the question with regard to manner of accident or whether the deceased was actually a driver and possesses a valid driving licence at the relevant time, but granted Rs.70,000/- observing in paragraphs-13 and 14 of the order, thus:

"13. This is a case, where the manner of accident is not proved. Rash and negligent driving of the driver of the crime vehicle is not proved. This is a case of own negligence. Due to the own negligence of the deceased, the accident occurred.

14. The deceased was 45 years old by the date of accident. He was driver by profession and since the manner of the accident is not proved, the petitioners are entitled to statutory limit of compensation of Rs.50,000/-. Towards loss of estate, the petitioners are awarded Rs.10,000/- and the 1st petitioner is awarded a sum of Rs.10,000/- towards consortium. Thus the petitioners are entitled to a total compensation of Rs.70,000/-."

8. Aggrieved of the said order, the petitioners preferred the instant appeal contending in the grounds of appeal that the Tribunal was not right in granting a meager amount without applying any multiplier, and sought to grant balance amount by enhancing the compensation.

9. Heard Sri T.C.Krishna, learned counsel for the appellants. No representation on behalf of the 2nd respondent-Insurance Company. None represents the 1st respondent-owner of the accident vehicle.

10. It is no doubt true, P.W.2 stated in his chief-examination that the RC book of the deceased was lost in the river, but the petitioners did not secure a duplicate RC from the authorities concerned atleast to view whether the deceased was really a driver or he was accompanying P.W.2 at the relevant time in the transport vehicle. Therefore, it is a case where the matter has to be remitted to the Tribunal by affording an opportunity to the petitioners to lead further evidence by filing a duplicate copy of the RC to substantiate that the deceased was the driver of the accident vehicle.

11. In the result, the appeal is allowed setting aside the order and decree dated 28.04.2006 passed by the Tribunal in M.V.O.P.No.223 of 2002 and the matter is remitted to the Tribunal with a direction to dispose of the original petition within a period of six months from the date of receipt of a copy of the order. The Tribunal is further directed to afford a chance to the petitioners to lead further evidence by filing

duplicate copy of the RC to substantiate that the deceased was the driver. There shall be no order as to costs.

12. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

A. SHANKAR NARAYANA, J

18th February, 2015

siva