

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.739 of 2009

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act by the claimants challenging the judgment and award dated 26.6.2006 passed in M.V.O.P. No.791 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-XI Additional District Judge (Fast Track Court), Guntur at Tenali.

2. The parties will hereinafter be referred to as they are arrayed before the Tribunal for the sake of convenience.

3. The facts leading to filing of the petition, in brief, are as follows: On 22.6.2003, at about 12.00 P.M., one Jyothula Padma and her family members were proceeding from Kolakaluru to Tenali in an auto bearing No.AP 7V 4704. When the auto reached near Petrol Bunk at RTC Bus stand, Tenali, the driver of the auto had driven the same in a rash and negligent manner at high speed, due to which the auto fell in the canal. Padma (hereafter referred to as, the deceased) sustained grievous injuries on various parts of the body and died. The accident occurred due to the rash and negligent driving of the driver of the auto against whom the Station House Officer, Tenali III Town Police Station registered a case in Crime No.93 of 2003 under Sections 337 and 304A IPC. By the time of the accident, Padma was aged about 23 years and used to earn Rs.100/- per day by attending coolie work. The petitioners are dependants on the income of the deceased. The auto bearing No.AP 7V 4704, which belongs to the first respondent, was insured with the second respondent and therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2,00,000/- to the petitioners with interest and costs.

4. The first respondent filed counter denying all the averments made in the petition, *inter alia*, contending that the auto of this respondent was insured with the second respondent – insurance company and therefore, the second respondent alone is liable to pay compensation, if any, to the petitioners. This respondent already sold the auto and as such he is not a necessary and proper party to the petition. Hence, the petition against this respondent is liable to be dismissed.

5. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that the Sub Inspector of Police, Tenali III Town Police

Station, investigated into the matter and arrived at a conclusion that the first petitioner and his mother harassed the deceased and they are responsible for unfortunate death of the deceased. The amount of compensation claimed by the petitioners, under various heads, is highly excessive and exorbitant. Hence, the petition may be dismissed against this respondent.

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

1. Whether the auto bearing No.AP 7V 4704 is involved in the accident occurred between RTC bus stand and petrol bunk, at Tenali on 22.6.2003 at about 12.00 P.M?
2. Whether the accident occurred due to the rash and negligent driving of the above auto?
3. Whether the deceased Jyothula Padma died in the said accident?
4. To what amount, is the petitioners are entitled towards compensation, from whom?

7. During the course of the trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A4 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

8. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the death of deceased was due to the cardio respiratory failure due to epileptic convulsion and dismissed the petition. Feeling aggrieved by the judgment and award of the Tribunal, the claimants preferred the present appeal.

9. Heard Sri B.Parameswara Rao, learned counsel for the appellants–claimants, Sri Ch.Ravindra Babu, learned counsel for the first respondent and Sri B.Devanand, learned standing counsel for the second respondent–insurance company.

10. The contention of the learned counsel for the claimants is two fold: (1) the finding of the Tribunal that the deceased died due to epileptic convulsion is not supported by medical evidence; and (2) the Tribunal, without considering the recitals of Ex.A2 charge sheet, erroneously dismissed the petition. ***Per contra***, learned counsel for the first respondent and second respondent submitted that the deceased died due to ill-health and there was no negligence on the part of the driver of the auto.

11. Now the point that arises for consideration in this appeal is:

Whether the deceased died in a road accident that occurred on 22.6.2003 at about 12 P.M. or not?

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Point:

12. To substantiate the case, the petitioner examined himself as P.W.1 and got marked Exs.A1 to A4. As per the testimony of P.W.1, on 22.6.2003 himself and his family members were proceeding to Tenali in an auto bearing No.AP 7V 4704. When the auto reached near V.S.R. College, Tenali, the driver of the auto had driven the same in a rash and negligent manner due to which the auto fell into the canal. Due to the accident, his wife-Padma (deceased) sustained grievous injuries. In the cross-examination, P.W.1 deposed that on the date of the accident himself and his family members were proceeding to Tenali as his wife was suffering with temperature and vomittings. His testimony further reveals that they admitted his wife in the hospital, but she died before commencement of the treatment.

13. As per the testimony of P.W.2 (Doctor), he conducted autopsy over the dead body of Padma (deceased). In the cross-examination, P.W.2 deposed that the deceased sustained one injury i.e., blackish contusion on the right lower eye-lid. If the testimony of P.W.2 is taken into consideration, there are no external or internal injuries on the body of the deceased. His testimony further reveals that the deceased was an epileptic patient. In the chief-examination, P.W.2 categorically deposed that the deceased died of cardio respiratory failure due to epileptic convulsion. A careful perusal of the testimony of P.W.2 reveals that the cause of death of deceased is not due to injuries sustained by her in road accident that occurred on 22.6.2003. As per the recitals of Ex.A1 certified copy of F.I.R., on the date of the accident, the deceased was shifted to the hospital in the auto. It is not out of place to extract hereunder the relevant portion of Ex.A2 charge sheet, which reads as under:

“During the course of investigation, L.Ws.4 to 7 suspected L.W.1 to be responsible for the death of the deceased at the time of inquest. L.W.20 sent the body of the deceased for P.M. examination to L.W.19 who gave her final opinion that the death of the deceased is due to cardio respiratory failure epileptic condition”.

14. A perusal of the above portion clearly indicated that the blood relatives of the deceased are suspecting that L.W.1 i.e., the first petitioner herein was responsible for the death of the deceased. In such circumstance, the possibility of lodging false

complaint in order to escape from the clutches of law by the petitioner cannot be ruled out completely. A perusal of the record reveals that the deceased was suffering from epileptic convulsions. In order to get compensation under the Motor Vehicles Act, the claimants have to establish that the deceased died in a road accident out of use of motor vehicle. In the present case, the petitioners miserably failed to prove that the deceased-Padma died due to the injuries sustained in the road accident that allegedly occurred on 22.6.2003. The Tribunal rightly considered all these aspects and arrived at a conclusion that the petitioners have created a story that the deceased died in a road accident. The Tribunal has assigned cogent and valid reasons to its finding. I am fully agreeing with the finding recorded by the Tribunal. Viewed from any angle, there are no grounds much less valid grounds to interfere with the well-considered judgment and award passed by the Tribunal. The appeal lacks merits and bona fides. Accordingly, the point is answered.

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

T.SUNIL CHOWDARY, J

Date: 07.4.2015

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