THE HON'BLE MRS JUSTICE ANIS

M.A.C.M.A.NO.1052 OF 2005

JUDGMENT:

This appeal is filed against the judgment and decree dated 03.02.2005 in O.P.No.1332 of 2003 on the file of the Motor Accident Claims Tribunal-cum-IV Additional Chief Judge, City Civil Court, Hyderabad.

The petition is filed by the petitioners under Section 163-A of the Motor Vehicles Act, 1988, claiming compensation of Rs.3,00,000/- for the death of one Istharamma (hereinafter referred to as "the deceased") in motor vehicle accident.

For the sake of convenience, the parties hereinafter referred to as they were arrayed in the Original Petition.

The brief averments made in the petition are as follows.

The petitioners state that on 05.02.2003 at about 10.30 pm, the deceased, after completing her work at market in Badepally, was returning to her house on foot via Dattatreya Temple and at that time lorry bearing No.ATT 9613 driven by the driver at high speed in rash and negligent manner, dashed her from behind due to which she fell down into a drainage canal and received serious head injuries. Immediately, she was shifted to Government Hospital, Badepally and from there she was shifted to Head Quarters Hospital of Mahabubnagar and admitted as inpatient, where she succumbed to injuries on 15.02.2003 while undergoing treatment. The Police, Jadcherla Police Station, registered case against the driver of the lorry. The petitioners stated that the deceased worked as labourer and used to earn Rs.3,000/- per month and she was the only earning member in their family and they were all dependants on her for their livelihood. Due to untimely death of the deceased, they lost everything including love and affection. The first respondent is the owner and the second respondent is the insurer of the lorry and hence, they are liable to pay the compensation.

The first respondent was set *ex parte* and the second respondent filed counter resisting the claim. The brief averments in the counter are as follows.

The second respondent put the petitioner to prove the age and income of the deceased and also put to prove that the driver holding valid subsisting license and finally stated that the compensation claimed by the petitioners is highly excessive and prayed the Court to dismiss the petition.

To substantiate the petitioners' claim, P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. On behalf of the second respondent, no oral or documentary evidence was adduced except Ex.B1 marked by consent.

After considering the oral and documentary evidence, the Tribunal held that the driver of the lorry drove the lorry in rash and negligent manner resulting in accident and in that accident, the deceased died and also held that the petitioners failed to prove that they are the legal representatives of the deceased and dismissed the claim of the petitioners.

Aggrieved by the judgment of the Tribunal, the petitioners filed the present appeal.

The learned counsel appearing for the appellants/petitioners argued that the petitioners are the daughters of the deceased and they are the dependants. Further, due to the sudden death of their mother, they lost love and affection. Being the legal representatives of the deceased, they are entitled for compensation and the Tribunal has not awarded any compensation. Therefore, prayed the Court to grant compensation.

Learned Standing Counsel for the Insurance Company argued that the Tribunal after considering the evidence on record rightly held that the petitioners failed to prove that they are the legal representatives of the deceased and rightly dismissed the claim of the petitioners and finally prayed the Court to dismiss the appeal.

Now, the points that arise for consideration of this appeal are as under.

(1) Whether the deceased Smt. Ishtaramma died in a motor accident that took place on 05.02.2003 due to rash and negligent driving of the lorry bearing No.ATT 9613?

(2) Whether the petitioners are entitled for compensation, if so, to what amount and from whom?

Point: A perusal of the evidence of P.Ws.1 and 2 shows that on the date of the accident, the lorry bearing No.ATT 9613 driven by its driver in a rash and negligent manner and hit the deceased from backside when she was returning home on foot. In the accident, the deceased sustained serious injuries and while taking treatment, she died. To prove the accident, the petitioners filed Ex.A1, copy of the FIR and Ex.A2, copy of the charge sheet. After considering the evidence of P.Ws.1 and 2 and Exs.A1 and A2, the Tribunal held that the accident occurred due to rash and negligent driving of the lorry bearing No.ATT 9613 and in that accident, the deceased died. This finding needs no interference.

With regard to quantum, the Tribunal after going through the evidence of P.Ws.1 and 2 clearly held that the petitioners failed to prove that they are the daughters of the deceased and further failed to prove that they are the legal representatives of the deceased. The Tribunal, after considering the evidence on record, rightly pointed out the discrepancies in the oral and documentary evidence adduced by them. However, the Tribunal specifically stated that the petitioners failed to adduce the evidence of one Pole Buchaiah, who gave the complaint to the police after the accident. Admittedly, Pole Buchaiah is the brother of the deceased. If the petitioners examined the said Pole Buchaiah, who is closely related to the petitioners and the deceased, the truth would have come out and he is the right person to say that the petitioners are the daughters of the deceased. In the absence of all these facts, the Tribunal rightly held that the petitioners

failed to prove that they are the legal representatives of the deceased.

In view of the above discussion, the Tribunal rightly dismissed the petition and that finding also needs no interference.

Hence, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

_____

(ANIS, J)

14th August 2015
RRB