

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1537 OF 2006

JUDGMENT:

The instant appeal is preferred by the petitioners aggrieved by the dismissal of claim petition laid under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') seeking a sum of Rs.2,50,000/- (Rupees two lakhs and fifty thousand), by the order and decree, dated 02-03-2006, in O.P. No.773 of 2004, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – V Additional District Judge, Nalgonda District at Miryalaguda (for short 'the Tribunal').

2. The appellants herein are petitioners in the OP before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of auto-rickshaw bearing registration No.AP 24U 7244, respectively, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 29-01-2004, one Chinthakayala Saidaiah S/o Peda Guruvaiah along with his mother Smt.Chinthakayala Guruvamma said to have boarded an auto-rickshaw bearing registration No.AP 24U 7244 at Hazarigudem in order to return to their village Kottala, and when it reached Hazarigudem outskirts at about 3.00 P.M., since the driver of the autorickshaw driven it in a rash and negligent manner, the said

Ch. Saidaiah said to have fallen on the road from the auto-rickshaw and, subsequently, the auto-rickshaw ran over him, due to which, he sustained grievous head injury and shifted to a nearby hospital, Hazarigudem and, thereafter, referred to Government Area Hospital, Miryalguda, where the duty doctor declared him as dead at about 5.00 P.M. The petitioners, who are wife, children and parents, being the legal heirs and dependants of the deceased,

sought the aforesaid compensation stating that the deceased was earning Rs.3,000/-(Rupees three thousand) per month on his labour work and was aged 28 years on the date of accident.

5. Respondent No.1, owner of the auto-rickshaw, remained *ex parte* before the Tribunal.

6. Respondent No.2 – Insurance Company strongly opposed the claim. It was specifically pleaded that, though, the accident said to have taken place on 29-01-2004 at 3.00 P.M., and shifted the deceased to the Hospital, where the police station is situated, they did not even report to the Station House Officer and, thereafter, shifted the deceased to Government Area Hospital, Miryalguda, and even then the petitioners failed to inform the police immediately, and lodged a report with the police only on 30-01-2004 at about 6.30 P.M. after a lapse of 20 hours. According to the 2nd respondent, there was manipulation for filing a false case and, therefore, sought to dismiss the claim petition.

7. Based on the pleadings, the Tribunal framed the following three issues about the responsibility for the accident.

“1. Whether the deceased Ch.Saidaiah died due to rash and negligent driving of Auto No.AP-24-U-7244 ?

2. Whether the claimants are entitled for any compensation from whom ?

3. To what relief ?”

8. During inquiry before the Tribunal, petitioner No.7, mother of the deceased, examined as PW.1 and marked Exs.A-1 to A-5 to substantiate their claim. Whereas, the 2nd respondent got marked Ex.B-1, certified copy of insurance policy, and no witnesses were examined.

9. On issue No.1, the Tribunal having thoroughly scanned the evidence of PW.1, culled out certain probabilities from the evidence on record and thereby recorded a definite finding that the death of the deceased has not taken place as projected and thereby held issue No.1 against the petitioners. On issue No.2, in view of the finding recorded on issue No.1, declined to determine the compensation sought for by the petitioners and, accordingly, dismissed the claim petition.

10. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal went wrong in dismissing the claim petition and that the Tribunal did not consider the evidence let in by the petitioners as the same would prove about the death of the deceased in a road accident and, therefore, sought to allow the appeal by granting compensation.

11. Heard Smt. S. Annapurna, learned counsel for the appellants – petitioners, and Sri B. Devanand, learned Standing Counsel for Insurance Company. Despite service of notice on respondent No.1, none appears for him.

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12. Perused the order and the evidence on record.

13. The short question that arises for consideration is,

whether the death of the deceased –Ch. Saidulu did really take place due to rash and negligent driving of the driver of auto-rickshaw bearing registration No.AP 24U 7244 as projected by the petitioners?

14. On perusal of the order under challenge, it is clear that the Tribunal disbelieved the taking place of accident as such and accepted the stand of the Insurance Company and, accordingly, dismissed the claim petition. But, as seen from

Ex.A-2, attested copy of charge sheet, it is evident that the Investigating Officer conducted a scene of occurrence panchanama and necessarily a rough

sketch of scene of offence ought to have been drawn which follows the scene of occurrence panchanama. Since panch-witnesses have been cited as LWs.8 and 9 in the copy of charge sheet marked as Ex.A-2, certainly, examination of scene of occurrence panchanama and rough sketch would have aided the Tribunal in recording a definite finding as to whether it was probable for the deceased in coming under the wheel of auto-rickshaw when he was alleged to have thrown out of the auto-rickshaw. Hence, without going into the merits of the case, the matter requires to be remitted for consideration afresh by the Tribunal.

15. Hence, the appeal is allowed, setting aside the order and decree, dated 02-03-2006, in O.P. No.773 of 2004, passed by the Tribunal. The matter is remitted to the Tribunal with

a direction to afford an opportunity to both sides to lead further evidence, more particularly, to the petitioners to exhibit scene of occurrence panchanama and the rough sketch of scene of offence and to further examine the Investigating Officer in case available in the direction of proving that the incident did really take place in the manner alleged to have occurred. Since it is an old case relating to the year 2004, the Tribunal is directed to dispose of the same within six (06) months from the date of receipt of the copy of this judgment. It is needless to mention that the Tribunal shall dispose of the matter on merits uninfluenced by the observations, if any, made by this Court. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

April 17, 2015.

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