

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A. No.676 of 2009

JUDGMENT:

This appeal is filed by the petitioners in O.P.No.378 of 2003 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Court, Vizianagaram (for short, 'the Tribunal'), challenging the judgment and award dated 27.10.2006, wherein and whereunder, the claim made by the appellants herein/petitioners before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), was dismissed.

The appellants herein are the petitioners, while the respondent Nos.1 to 3, who are the driver, owner and insurer of the jeep bearing registration No.AP 7V 2843 respectively, are respondents in the original petition.

The parties will be referred to as they were arrayed before the Tribunal in the original petition to avoid confusion.

The facts in brief are that on 27.02.2003 at about 10 a.m., the driver of the jeep bearing registration No.AP 7V 2843 had driven it in a rash and negligent manner and dashed against Ijju Lakshmi (hereinafter will be referred to as 'deceased') near Prabhakara Rao Rice Mill of Cheepurupalli Railway Station, Vizianagaram District. Immediately after the accident, Ijju Lakshmi was shifted to Government Hospital, Cheepurupalli, where she died while undergoing treatment on 05.03.2003. At the time of the accident, the deceased was earning Rs.50/- to Rs.60/- per day as a beggar. The petitioners are the daughters of the deceased.

The respondents 1 and 2 remained *ex parte* before the Tribunal.

The 3rd respondent-Insurance Company filed counter denying the material averments in the petition, *inter alia*, contending that the

accident occurred only due to the negligence of the deceased and there was no negligence on the part of the driver of the jeep. It is further contended that the petitioners are not the legal heirs of the deceased and the amount of compensation claimed by them under various heads is highly excessive and exorbitant. It is further contended that the owner of the jeep had violated the terms and conditions of the policy and therefore this respondent is not liable to pay compensation to the petitioners. Hence, the petition may be dismissed.

Basing on the above pleadings, the Tribunal framed three issues about the responsibility for the accident. During trial before the Tribunal, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked; and on behalf of the 3rd respondent-Insurance Company, Exs.B.1 and B.2 were marked.

On appraisal of the evidence, both oral and documentary, let in by both the parties, and also the other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the jeep and dismissed the petition on the ground that the petitioners are not the legal heirs of the deceased.

Sri G.V.S.Mehar Kumar, representing Sri A.Jagannadha Rao, learned counsel for the appellants/petitioners, submitted that the finding of the Tribunal that the petitioners are not legal heirs of the deceased, is not supported by any evidence. He further submitted that the Tribunal failed to appreciate the recitals of inquest panchanama and dismissed the petition on erroneous grounds.

Per contra, Sri N.Mohan Krishna, learned Standing Counsel for the 3rd respondent-Insurance Company submitted that absolutely there is no material on record to establish that the petitioners are daughters of the deceased Ijju Lakshmi. He further submitted that taking

advantage of the death of Ijju Lakshmi, the petitioners have filed the present petition to claim compensation from the 3rd respondent.

As per the findings of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the jeep. The 3rd respondent-Insurance Company did not choose to file appeal challenging the finding of the Tribunal. The finding of the Tribunal, so far as the manner of the accident and factum of death of Ijju Lakshmi, became final. There are no grounds much less valid grounds to upset the finding recorded by the Tribunal so far as the manner of the accident. Hence, I am of the considered view that the accident was occurred due to rash and negligent driving of the driver of the jeep, which resulted the death of Ijju Lakshmi.

Now the point that arises for consideration in this appeal is, whether the petitioners are the daughters of the deceased Ijju Lakshmi or not.

In the counter, the 3rd respondent has taken a specific plea that the petitioners are not daughters of the deceased. One Kondru Appanna is the *de facto* complainant as per Ex.A.1 F.I.R. As per the recitals of Ex.A.1 F.I.R., the *de facto* complainant as well as the deceased Ijju Lakshmi used to reside under the same roof in Sadhu Matham of Cheepurupalli. There is no mention in Ex.A.1 F.I.R. that the petitioners are daughters of late Ijju Lakshmi. In Ex.B.2 case record also, it is not mentioned that the petitioners are the daughters of the deceased. I have carefully scanned the inquest panchanama Ex.A.4, wherein it is mentioned that the petitioners are the daughters of the deceased. It is needless to say that the purpose of conducting of inquest is to ascertain the nature of death of the deceased. In the inquest panchanama, the name of the deceased is mentioned as Ijju Lakshmi. The 1st petitioner's name is also Ijju Lakshmi. While appreciating the oral and documentary evidence, the Tribunal has to

take into consideration the ground realities. It is a known fact that the name of the mother and daughter is not one and the same in general. The petitioners failed to adduce cogent and convincing evidence explaining the reasons for naming the 1st petitioner as Lakshmi though her mother's name is also Lakshmi. It is the duty of the petitioners to produce legal heir certificate or any other documents to establish that they are the legal heirs or legal representatives of the deceased. In the instant case, the petitioners have not produced any evidence much less legally admissible evidence to establish that they are the daughters of the deceased.

To substantiate their claim, the 2nd petitioner examined herself as P.W.1. In the cross-examination, P.W.2, in unequivocal terms, deposed that one Kondru Appanna is residing in Sadhu Matham at Cheepurupalli. She further deposed that Kondru Appanna gave instructions to the advocate to file the present petition. It is not out of place to extract hereunder the relevant portion in the cross-examination of P.W.2:

"I do not know the family members of the deceased, or the surname of the parents of the deceased."

A perusal of this sentence cast a cloud on the stand taken by the petitioners. If really, the petitioners are the daughters of the deceased, she might have stated the parents' name as well as the surname of the deceased. The material placed before the Court clinchingly establishes that Kondru Appanna and the deceased have been residing in Sadhu Matham of Cheepurupalli since very long time.

Except the self-serving testimony of P.W.2, there is no other evidence to establish that the petitioners are the daughters of the deceased-ljju Lakshmi. The material available on record clinchingly establishes that the petitioners are only name-lenders and Kondru Appanna is instrumental in filing the present petition as if the

petitioners are the daughters of deceased. While deciding the additional issue, "*Whether the petitioners are not the legal heirs of the deceased Lakshmi*", against the petitioners, the Tribunal has assigned cogent and valid reasons. There are no grounds much less valid grounds to upset the same finding. Therefore, I have no hesitation to hold that the petitioners are not the daughters of the deceased-Ijju Lakshmi and they have no locus to file the petition under Section 166 of the M.V.Act claiming compensation for the death of Ijju Lakshmi.

In the light of the foregoing discussion, I have no hesitation to hold that the appeal lacks merits and bona fides.

Accordingly, this appeal is dismissed without costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

27th January, 2015.
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