

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.203 OF 2013

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, challenging the judgment and award dated 26.10.2012 passed in M.V.O.P. No.614 of 2011 on the file of the Chairman, Motor Accident Claims Tribunal-cum-X Additional District & Sessions Judge (Fast Track Court), Visakhapatnam at Anakapalle, wherein and whereby the petition filed claiming compensation of Rs.3,00,000/- for the death of Vaddadi Kanaka Raju was dismissed.

2. For the sake of convenience, the parties to this appeal will hereinafter be referred to as they are arrayed before the learned Commissioner.

3. The facts leading to filing of the present appeal are briefly as follows: On 22.6.2000, Vaddadi Kanaka Raju boarded the tractor-trailer bearing Nos.AP 5X 768 and AP 5X 769 at Pydivada to go to Gollalapalem. Kanaka Raju sat on the casurina sticks loaded in the trailer. When the tractor reached Kilo Metre Stone No.4 between Pydivada and Gollalapalem, the driver of the tractor had driven the same in a rash and negligent manner, due to which Kanaka Raju (hereinafter referred to as, the deceased) fell down from the load and died on the spot. The Station House Officer, Sabbavaram Police Station registered a case in Crime No.48 of 2000 under Section 304A IPC against the driver of the tractor-trailer. By the time of the accident, the deceased was aged about 35 years and used to earn Rs.6,000/- per month by doing mason work. The first petitioner is the wife, petitioner Nos.2 and 3 are children of the deceased, and they are all dependants on the income of the deceased. The first respondent is the driver and second respondent is the owner of the tractor; therefore, they are jointly and severally liable to pay compensation of

Rs.3,00,000/- to the petitioners with interest and costs.

4. The respondents filed counter denying all the averments made in the petition including the manner of the accident, age and income of the deceased, *inter alia*, contending that the accident occurred due to the negligent act of the deceased and there was no negligence on the part of the driver of the tractor-trailer. The first respondent was having valid and effective driving licence as on the date of the accident. On humanitarian grounds, at the request of villagers, second respondent paid an amount of Rs.76,000/- to the first petitioner as compensation towards full and final settlement. The first petitioner also executed Ex.B1 agreement acknowledging receipt of Rs.76,000/- and promising not to file petition before any court either by herself or by anybody on her behalf against the respondents. Having received the amount of Rs.76,000/- towards full settlement and keeping quiet for a period of 11 years, the first petitioner (wife of the deceased) along with her minor children, filed the present petition. Hence the petition is liable to be dismissed.

5. Basing on the rival contentions, the Tribunal framed the following issues:

- (1) Whether the deceased Vaddadi Kanaka Raju died in a motor accident that occurred on 22.6.2000 due to rash and negligent driving of vehicle bearing No.AP 5X 768 (tractor) and AP 5X 769 (trailer) by its driver as pleaded by the petitioners?
- (2) Whether the petitioners are entitled for compensation? If so, to what amount and from which of the respondents?
- (3) To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Ex.B1 agreement was marked.

7. On appraising the oral, documentary evidence and other material available on record, the Tribunal arrived at the conclusion that the present petition is not maintainable and dismissed the same. Feeling aggrieved by the judgment and award of the Tribunal, the claimants preferred the present appeal.

8. The learned counsel for the petitioners submitted that the Tribunal basing on Ex.B1 erroneously dismissed the petition. He further submitted that since there is no limitation to claim compensation under the Motor Vehicles Act, the Tribunal ought to have allowed the petition. ***Per contra***, learned counsel for the respondents submitted that the Tribunal, considering all the relevant aspects, rightly dismissed the petition. He further submitted that there are no grounds to interfere with the well considered judgment and award of the Tribunal.

9. Now the point that arises for consideration in this appeal is as follows:

Whether there are any grounds to interfere with the judgment and award passed by the Tribunal dismissing the claim petition?

-

-

Point:

10. To substantiate the case, the first petitioner examined herself as P.W.1 and got marked Exs.A1 to A5. P.W.2 present at the time of inquest over the dead body of Vaddadi Kanaka Raju (the deceased). P.Ws.1 and 2 are not eye witnesses to the accident; therefore, their testimony is no way helpful to establish the rashness or negligence on the part of the first respondent (driver of the tractor-trailer). A perusal of Exs.A1 (F.I.R.), A4 (charge sheet) and A5 (M.V.I. report) clearly reveals that Vaddadi Kanaka Raju (the deceased) died in a motor vehicle

accident that occurred on 22.6.2000. The respondents are not seriously disputing the manner of the accident and the factum of death of the Kanaka Raju in that accident. The Tribunal, basing on the material available on record, arrived at the conclusion that the accident occurred due to the rash and negligent driving of the driver of the tractor-trailer. I am fully agreeing with the finding recorded by the Tribunal as to the manner of accident and factum of death of the deceased.

11. The oral testimony of P.Ws.1, 2, R.Ws.1 and 2 coupled with Exs.A1 to A5 and Ex.B1 clearly reveals that the accident occurred on 22.6.2000. Admittedly the present petition was filed on 14.3.2011. Thus, the present petition is filed about eleven (11) years after the accident. This court is very much conscious that no period of limitation is prescribed to file claim petition under the Motor Vehicles Act. That does not mean the claimants can file petition, at their whims and fancies, as and when they pleased. When there is a delay of 11 years, the claimants have to show justifiable cause for such delay. Let me consider the facts of the case, whether the petitioners have assigned valid reason for inordinate delay in filing the petition. There is no averment, in the petition, explaining the reason for non-filing of the petition for a period of 11 years. The respondents have taken a specific plea, in their counter, that the petitioners have filed the present petition to have an unlawful gain. There is no whisper in the testimony of P.W.1 that she waited for a period of 11 years for filing the petition for the reasons beyond her control. The petitioners did not even attempt to explain why they have waited for a period of about 11 years to file the present claim petition.

12. As per the testimony of as R.Ws.1 and 2, in the presence of village elders, the second respondent (R.W.1) paid an amount of Rs.76,000/- to the first petitioner towards full and final settlement. In

the cross-examination of R.Ws.1 and 2 nothing is elicited to shake their testimony so far as receiving of an amount of Rs.76,000/- by the first petitioner from the second respondent is concerned. In the cross-examination, P.W.1 denied the suggestion that she received an amount of Rs.76,000/- from the second respondent on 23.6.2000 in the presence of village elders towards full and final settlement. In the cross-examination, P.W.2 in unequivocal terms deposed that Ex.B1 agreement bears his signature. P.W.2, who was examined on behalf of the petitioners, supported the case of the respondents so far as execution of Ex.B1 agreement by the first petitioner in favour of second respondent by receiving an amount of Rs.76,000/- towards full and final settlement. For better appreciation of rival contentions, it is not out of place to extract hereunder relevant portion in Ex.B1.

నా భర్త గార్కి వచ్చే ఇన్సూరెన్సు సొమ్ము నేను తీసుకొని నీకు పూర్తిగా యిచ్చి వేయుటకు తగు మనుష్యుల కృతంగా నేను అంగీకరించి యున్నాను□ నీ పయిని నేను గాని నా తరపు వారు గాని యే సివిల్ కోర్టులోగాని, క్రిమినల్ కోర్టులోగాని, లేబర్ కోర్టులోగాని ఎవ్విధమైన చర్యజరిపించగల దాననుగాను□ నీవల్ల నా భర్త గారు చనిపోయినందున నా పిల్లల పోషణ నిమిత్తం ఈ రోజున రు□76,000/- అక్షరముల డెబ్బది ఆరువేల రూపాయలు మాత్రం ఇచ్చినందున ముట్టినది□

A perusal of the above portion of Ex.B1 clearly reveals that the first petitioner received an amount of Rs.76,000/- towards full and final settlement. As per the terms and conditions of Ex.B1, first petitioner is not entitled to file the present petition. The oral testimony of R.Ws.1 and 2 coupled with Ex.B1 clearly reveals that the first petitioner has accepted an amount of Rs.76,000/- from the second respondent towards full and final compensation. Otherwise, there is no need for the second respondent to pay the amount of Rs.76,000/- to the first petitioner on the very next day of the accident. It is not the case of the petitioners that the second respondent has paid the amount of Rs.76,000/- for any other purpose other than one mentioned in Ex.B1.

13. Having regard to the facts and circumstances of the case, I am of the considered view that the present petition is filed after a long lapse

of 11 years by suppressing the material facts and no justifiable cause is shown for such delay. The Tribunal, after considering all these aspects, rightly dismissed the petition. There are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal. Accordingly, the point is answered.

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

T.SUNIL CHOWDARY, J.

Date: 09.9.2015.

YS