

HON'BLE SMT JUSTICE ANIS
CIVIL MISCELLANEOUS APPEAL No.3459 of 2004

J U D G M E N T:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order, dated 04.03.2004, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Kadapa, Kadapa District, in M.V.O.P.No.1078 of 2001.

2. The appellant/petitioner filed the above M.V.O.P under Section 166 of the Act, claiming compensation of Rs.1,00,000/- on account of the death of Kothapalli Subbareddy in a motor vehicle accident, that occurred on 10.02.2000.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are as follows:

The petitioner stated that he is the adopted son of the deceased Kothapalli Subbareddy and on 10.02.2000, when the deceased was crossing the road from Ramapuram bus stand, one TATA SUMO bearing Registration No.AP 04C 3636 belonging to the first respondent and insured with the second respondent came with a high speed in a rash and negligent manner on wrong side and hit the deceased, due to which the deceased sustained injuries. While undergoing treatment at the head quarters hospital, Kadapa, the deceased Kothapalli Subbareddy died. The petitioner stated that the deceased was working in a rice mill and was earning Rs.50/- per day, which was contributed to the petitioner. The petitioner stated that due to the sudden demise of the deceased, he lost love

and affection. The petitioner further stated that the deceased executed an unregistered Will Deed on 10.12.1998 bequeathing all assets in favour of the petitioner. Therefore, the petitioner prayed to grant Rs.1,00,000/- as compensation.

5. The first respondent did not choose to file any counter.

6. The brief averments made in the counter filed by the second respondent are as follows:

The second respondent put the petitioner to prove the age and income of the deceased and stated that the deceased died issueless and his wife pre-deceased him and the petitioner is the legal heir of the deceased. It is also stated that the alleged Will Deed is forged and fabricated one. The second respondent specifically stated that during the life time of the deceased, he was living in a rice mill at Ramapuram belonging to one Harinatha Reddy and the said Harinatha Reddy was looking after the deceased by providing food, cloth and shelter. The second respondent finally stated that the compensation claimed by the petitioner is high and excessive. Further, the petitioner is not a legal heir of the deceased. Therefore, the second respondent approached the Court to dismiss the petition.

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

1. Whether the accident occurred due to the rash and negligent driving of the TATA Sumo No.AP-04-C-3636 by its driver?
2. Whether the petitioner is entitled for compensation and so to what amount and from whom?

3. To what relief?

8. To substantiate the petitioner's claim, P.Ws.1 and 2 are examined and Exs.A-1 to A-5 are marked.

9. The Tribunal, after considering the evidence of P.W.2, Ex.A-1 i.e., certified copy of the FIR in Crime No.14 of 2000 and Ex.A-4-certified copy of the charge sheet, held that the accident occurred due to rash and negligent driving of the driver of the TATA SUMO bearing No.AP 04C 3636 and dismissed the petition filed by the petitioner on the ground that the petitioner failed to prove that he is the legal representative of the deceased.

10. Aggrieved by the order of the Tribunal, the petitioner/appellant filed the present appeal.

11. Learned counsel for the appellant/petitioner argued that the petitioner is the adopted son of the deceased and that he was dependent on the earnings of the deceased. Further, the deceased executed a Will Deed, dated 10.12.1998, bequeathing all his assets, as the petitioner was his adopted son and due to the sudden demise of the deceased, the petitioner lost love and affection and prayed the Court to grant compensation.

12. The learned counsel for the appellant/petitioner relied on the case law reported in ***Gujarat State Road Transport Corpn., Ahmedabad Vs. Ramanbhai Prabhatbhai and another***^[1], wherein it is held at para 10 as follows:

“The expression ‘legal representative’ has not been defined in the Act. Section 2(11) of the *Code of Civil Procedure*, 1908 defines ‘legal representative’ as a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the

deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The above definition, no doubt, in terms does not apply to a case before the Claims Tribunal but it has to be stated that even in ordinary parlance the said expression is understood almost in the same way in which it is defined in the *Code of Civil Procedure*. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Clause (b) of sub-section (1) of section 110-A of the Act authorises all or any of the legal representatives of the deceased to make an application for compensation before the Claims Tribunal for the death of the deceased on account of a motor vehicle accident and clause (c) of that sub-section authorises any agent duly authorised by all or any of the legal representatives of the deceased to make it. The proviso to sub-section (1) of section 110-A of the Act appears to be of some significance. It provides that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased. Section 110-A (1) of the Act thus expressly states that (i) an application for compensation may be made by the legal representatives of the deceased or their agent and (ii) that such application shall be made on behalf of or for the benefit of all the legal representatives. Both the person or persons who can make an application for compensation and the persons for whose benefit such application can be made are thus indicated in section 110-A of the Act. This section in a way is a substitute to the extent indicated above for the provisions of section 1-A of the *Fatal Accidents Act*, 1855 which provides that “every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased.” While the *Fatal Accidents Act*, 1855 provides that such suit shall be for the benefit of the wife, husband, parent and child of the deceased, section 110-A (1) of the Act says that the application shall be made on behalf of or for the benefit of the legal representatives of the deceased. A legal representative in a given case need not necessarily be a wife, husband, parent and child. It is further seen from section 110-B of the Act that the Claims Tribunal is authorised to make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be

paid.”

13. The learned counsel for the appellant/petitioner also relied on the case law reported in **Anil Tiwari and others Vs. Saheb Singh and others**^[2], wherein it is held at para 11 as follows:

“We may, however, refer to *Gujarat State Road Trans. Corpn. v. Ramanbhai Prabhatbhai*, 1987 ACJ 561 (SC), on the question of legal representatives. Their Lordships of the Supreme Court have observed in this case that in Indian society, brothers, sisters and brother’s children, etc., live together and they are dependent upon the breadwinner of the family and there is no justification to deny them compensation. In that view of the matter, the claimants have a right to maintain a claim petition under section 166 of the *Motor Vehicles Act*, 1988.”

14. The appellant/petitioner finally prayed the Court that he is the legal representative of the deceased and, therefore, he is entitled for compensation and the Tribunal has not granted any compensation and prayed the Court to set aside the dismissal order passed on 04.03.2004 by the Tribunal.

15. On the other hand, learned counsel for the 2nd respondent argued that the deceased, before the accident, was residing in a rice mill, which belongs to one Harinatha Reddy and the said person used to look after the deceased by providing food, cloth and shelter. Further, this fact was proved in the inquest report where the said Harinatha Reddy was present at the time of inquest, but the petitioner was never present. Further, Ex.A-5, which is an unregistered Will Deed, dated 10.12.1998, cannot be relied upon. It is also argued that when the petitioner is claiming that he is the adopted son of the deceased, then why the deceased was living in a rice mill, which belongs to one Harinatha Reddy and

further, at the time of the death of the deceased, the deceased was aged about 75 years and he should have been with the petitioner, but not in the rice mill of one Harinatha Reddy and finally prayed the Court to dismiss the petition.

16. **POINTS 1 & 2:** On a perusal of the evidence of P.W.2, who is an eye witness to the accident and Exs.A-1 and A-4, it is proved by the petitioner that the accident occurred due to rash and negligent driving of the driver of the TATA SUMO bearing No.AP 04C 3636 by its driver and in the said accident, the deceased Kothapalli Subbareddy died. The said finding of the Tribunal regarding the manner of the accident needs no interference.

17. Now, coming to the point of compensation, the main contention of the petitioner is that he is the adopted son of the deceased and except deposing orally, he did not place any evidence to prove that he is the adopted son. The inquest report shows that the deceased was residing in the rice mill of one Harinatha Reddy and he used to look after him. P.W.1, in his cross-examination, also admitted this fact. If really, the petitioner is the adopted son of the deceased, there is no reason why the deceased was staying with one Harinatha Reddy, owner of the rice mill, who used to look after him. Even Ex.A-2-inquest report also speaks this fact. Coming to the contention of the appellant/petitioner that the petitioner is the legal representative of the deceased is not true and it is also not true that he is the foster son of the deceased, apart from claiming as adopted son, the petitioner/appellant also filed Ex.A-5 an unregistered Will Deed, dated 10.12.1998. To prove this fact also, the petitioner has not examined any witnesses. The petitioner is claiming the compensation of Rs.1,00,000/- from the respondents on the ground

that he is the adopted son, but he failed to prove the same. Admittedly, the petitioner is not dependent on the earnings of the deceased. The petitioner is aged more than 40 years and the deceased, at the time of his death, is aged more than 75 years. Therefore, the petitioner cannot be termed as a dependent on the earnings of the deceased. When the petitioner failed to prove that he is the adopted son of the deceased by producing cogent evidence, he cannot claim compensation on the ground of loss of love and affection. The Tribunal, after considering the evidence of P.W.1, rightly held that the petitioner has failed to prove that he is the legal representative of the deceased and the said finding of the petitioner needs no interference. Learned counsel for the petitioner relied upon the case law reported in ***Gujarat State Road Transport Corpn., Ahmedabad Vs. Ramanbhai Prabhatbhai and another (1 supra)***. In the said judgment, the Hon'ble Supreme Court rightly held that Section 110 of the Act clearly held who are the legal representatives to make an application for compensation before the Claims Tribunal after the death of the deceased. In the absence of any evidence, the Tribunal rightly held that the petitioner is not entitled for any compensation. The petitioner in this case failed to prove that he was the legal representative of the deceased. Therefore, he cannot claim compensation from the respondents.

18. Hence, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS,
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Date: 21st August, 2015

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Date: 21st August, 2015

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[\[1\]](#) 1987 ACJ 561

[\[2\]](#) 2001 ACJ 471