

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. Nos.497 and 508 of 2005

COMMON JUDGMENT:

These two appeals arise out of one and the same accident, though, the learned Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad (for short, 'the Tribunal') has dealt with both the cases separately in O.P.No.1036 of 1998 and O.P.No.1034 of 1998 by the orders dated 26.10.2004. The petitioners respectively, preferred the instant appeals having got aggrieved of the judgments dismissing their claims.

2. The appellants herein are the petitioners, while the respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents in both the original petitions.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 19.05.1998 at about 6-00 p.m., the petitioner in O.P.No.1036 of 1998, which relates to M.A.C.M.A.No.497 of 2005 (former appeal), along with Vadla Konda Limbadri, who was deceased in O.P.No.1034 of 1998, which claim relates to M.A.C.M.A.No.508 of 2005 (latter appeal), started on his Suzuki motorcycle bearing registration No.AP 25/2625 from Armoor to go to Kuknoor village. While they were proceeding cautiously on the side of the road and reached outskirts of Anksapur village after crossing electrical sub-station, a tipper lorry bearing registration No.AP 9U 3564 driven in a rash and negligent manner at high speed came from behind and dashed their two wheeler, due to which, the petitioner in the former appeal sustained injuries and the pillion rider, who was the deceased in the latter appeal, succumbed to the injuries later. The petitioner in the former appeal laid claim for Rs.2,00,000/-, whereas the legal representatives of the deceased in the latter appeal laid claim for Rs.3,00,000/-, as compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

5. The 1st respondent, owner of the accident vehicle, remained *ex parte* before the Tribunal and the 2nd respondent has taken various pleas. A specific plea was taken

by the 2nd respondent that the petitioners suppressed real facts and laid the claims as the concerned police filed final report under Section 173 of Cr.P.C. before the Judicial Magistrate of First Class, Armoor in Crime No.27 of 1998 dated 19.05.1998 of Velpoor Police Station and it was mentioned therein that Vadlakonda Limbadri was driving the motorcycle in a rash and negligent manner, as a result of which, the motorcycle dashed against the tipper on its left back side and the deceased was responsible for taking place of the accident, and, therefore, sought to dismiss the claim.

6. Basing on the said pleadings, the Tribunal framed three identical issues in both the petitions about the responsibility for the accident. During enquiry before the Tribunal, in the former appeal, the petitioner examined himself as P.W.1 besides examining Dr.L.Ramulu as P.W.2 and marked Exs.A.1 to A.13. On behalf of the contesting 2nd respondent-Insurance Company, no witnesses were examined, but marked Exs.B.1 to B.3 on consent, which are copies of final report, insurance policy and the statement of P.W.1 recorded under Section 161 of Cr.P.C. In the latter appeal, the 1st petitioner, being the wife of the deceased, examined herself as P.W.1, besides examining one Aare Ravi, an eyewitness to the occurrence, as P.W.2 and marked Exs.A.1 to A.10, and on behalf of the contesting 2nd respondent-Insurance Company, Exs.B.1 and B.2, which are copies of insurance policy and final report, were marked on consent.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by both parties, dismissed both the claims.

8. Aggrieved of the aforementioned orders, as their claims were dismissed, they preferred the aforesaid appeals contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record and the Tribunal ought not to have given weight to the statement of Adepu Sahadev (petitioner in the former appeal) recorded under Section 161 of Cr.P.C. and the final report, despite the fact that Ex.A.1 showing that there was rash and negligent driving of the driver of the tipper, and, therefore, they sought to set aside the judgments and decrees passed by the Tribunal and to grant amounts towards compensation for the injuries sustained by Adepu Sahadev and for the death of Vadlakonda Limbadri respectively.

9. Heard Sri D.Bhaskar Reddy, learned counsel for the appellants, and Smt.

V.Ratnakumari, learned Standing Counsel for the 2nd respondent-Insurance Company, in both the appeals. None represents the 1st respondent-owner of the accident vehicle in the former appeal. In the latter, the claim against the 1st respondent-owner of the accident vehicle was dismissed for default on 04.01.2012. However, dismissal of the appeal for default against him is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in ***Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others***, wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

10. The learned counsel for the appellants contends that the F.I.R. is specific in proving the rash and negligent manner of the driver of the tipper and the Tribunal was not right in recording the findings basing on Exs.B.1 to B.3 and no weight should have been given to the statement of petitioner in the former appeal recorded under Section 161 of Cr.P.C. The learned counsel for the 2nd respondent-Insurance Company, on the other hand, submits that the final report marked in both the appeals shows that the accident had taken place only due to the rash and negligent driving of the deceased in the latter appeal, and, therefore, there is no merit in these appeals and sought to dismiss them.

11. As seen from the evidence, both, oral and documentary, let in by the parties, it is no doubt true that in Exs.B.1 to B.3, marked on consent, the consent cannot be extended to the extent of proving the contents therein. In fact, the order of acceptance or rejection of final report marked as Ex.B.2 in the latter appeal was not filed by the Insurance Company, which document is material to record a definite finding by the Tribunal. The very fact that the said order was not tendered into Court

by the Insurance Company and only a copy of a final report was tendered without revealing the further action that was taken by the learned Magistrate's Court on Ex.B.2 original, the Tribunal ought not to have recorded a definite finding on that aspect of case. Therefore, it amounts to deviation in appreciation of evidence on record.

12. The next circumstance is, that it is no doubt true that copy of the statement recorded under Section 161 of Cr.P.C. of the petitioner in the former appeal was marked as Ex.B.3 in Cr.No.27 of 1998, and the Tribunal relied on the said statement and also the final report marked as Ex.B.1 and decided against the petitioner in O.P.No.1036 of 1998, but it is to be observed that the Insurance Company has not taken any steps to examine the investigating officer to prove that there has been any variance as to the version occurring in the F.I.R. which was first in point of time, despite the fact that the version of P.W.1 in O.P.No.1036 of 1998 who supported the case of the petitioners in O.P.No.1034 of 1998 and even a perusal of Ex.B.1, final report would not disclose anything as to why Ex.B.1 was given a go-by by the investigating agency. Thus, there is infirmity in the finding recorded by the Tribunal in deciding the claims of the petitioners. Therefore, matter is remitted to the Tribunal directing to afford an opportunity to both sides to lead further evidence and also to further examine the witnesses already examined, if necessary, so as to prove the contents of the documents and to take into consideration Ex.A.1 version and record a definite finding on Ex.B.1 version, by evaluating further evidence to be let in, in accordance with law.

13. In the result, both the appeals are allowed setting aside the orders and decrees dated 26.10.2004 passed by the Tribunal in O.P.No.1036 and O.P.No.1034 of 1998 and both the matters are remitted to the Tribunal with a direction to dispose of the original petitions within a period of six months from the date of receipt of a copy of the order. The Tribunal is further directed to afford an opportunity to both sides to lead further evidence by examining the witnesses already examined, if necessary, and to examine further witnesses so as to prove the contents of the documents and to dispose of the O.Ps. in accordance with law. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

20th February, 2015

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