

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.64 of 2013

JUDGMENT:

1 Aggrieved by the judgment and award dated 27.09.2012 passed in M.V.O.P.No.558 of 2011 on the file of Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Vizianagaram, wherein and whereby an amount of Rs.3,42,000/- was awarded towards compensation as against the claim of Rs.4.00 lakhs, by exonerating the insurer of the crime vehicle and fixing the liability on the owner and driver of the crime vehicle, the claimants preferred this appeal under Section 173 of the Motor Vehicles Act,1988.

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

3 The facts that led to the filing of the present appeal, briefly, are as follows:

4 On 03.11.2010 one Appalanaidu was proceeding towards Vizianagaram from Chintalavalasa after selling milk. When he reached APSP quarters, the driver of the car bearing No.AP 05 M 2003 i.e. first respondent herein, drove the same in a rash and negligent manner and dashed against Appalanaidu. As a result, Appalanaidu fell down from his cycle and sustained injuries. Appalanaidu (hereinafter referred to as 'the deceased') died in Care hospital, Visakhapatnam on 20.11.2010 while undergoing treatment. By the date of accident, the deceased was aged about 54 years and used to earn Rs.200/- per day as milk vendor. First petitioner is wife, petitioner Nos.2 and 3 are children of the deceased and they are dependents on the income of the deceased. First respondent is driver, second respondent is owner and third respondent is the

insurer of the car bearing No.AP 05 M 2003. Therefore, respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioners. Hence the petition.

5 First respondent filed counter denying the averments made in the petition including the manner of accident, age and income of the deceased. This respondent was having valid and effective driving licence as on the date of accident. It is further submitted that the deceased suddenly jumped from the cycle and hence the petitioners are entitled to compensation under no fault liability. The car bearing No.AP 05 M 2003 was insured with the third respondent as on the date of accident, therefore, the third respondent alone is liable to compensation, if any, to the petitioners. Hence the petition may be dismissed.

6 Second respondent filed memo adopting the counter filed by the first respondent.

7 Third respondent filed counter denying all the material averments made in the petition including the manner of accident, age and income of the deceased. The petitioners are not entitled to claim compensation from this respondent unless they prove that the driver of the crime vehicle was having valid and effective driving licence as on the date of accident. The accident occurred due to the negligent act of the deceased himself, therefore, this respondent is not liable to pay compensation to the petitioners. It is further contended that the second petitioner is married daughter and the third petitioner is married son of the deceased, therefore, they are not entitled to claim compensation from this respondent. Hence the petition may be dismissed.

8 Basing on the above pleadings, the Tribunal framed the following issues for trial.

- a. Whether the accident and death of the deceased viz., Avuru Appalanaidu is due to the rash and negligent driving of the vehicle (car) bearing No.AP 05 M 2003 by its driver?
- b. What is the correct age and income of the deceased as on the date of accident?
- c. Whether the petitioners are entitled to any compensation and, if so at what quantum and from which of the respondents?
- d. To what relief?

9 During the course of trial, on behalf of the petitioners P.Ws.1 to 4 were examined and Exs.A.1 to A.6 and Ex.X.1 and X.2 were marked. On behalf of the respondents, first respondent was examined as R.W.1. On behalf of the third respondent no oral evidence was adduced, but copy of the insurance policy was marked as Ex.B.1.

10 On appreciating the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the first respondent and allowed the petition in part by awarding an amount of Rs.3,42,000/- as compensation, directing the respondent Nos.1 and 2 to pay the compensation to the petitioners and dismissed the petition against the third respondent. As stated supra, the petitioners, aggrieved by the order of the Tribunal exonerating the third respondent from its liability, preferred the present appeal.

11 The contention of the learned counsel for the petitioners is that the Tribunal has not considered the oral testimony of R.W.1 in right perspective and dismissed the petition against the third respondent on assumptions and presumptions. He further submitted that the Tribunal failed to consider the testimony of P.W.2 who is an eyewitness to the accident. He further submitted that the finding of the Tribunal that the car bearing No.AP 05 M 2003 did not involve in the accident is based on surmises and conjectures.

12 *Per contra*, the learned counsel for the third respondent submitted that the Tribunal has rightly dismissed the petition against the third respondent. He further submitted that the petitioners, in collusion with the respondent Nos.1 and 2, have filed the O.P. in order to get compensation from this respondent.

13 Basing on the above rival contentions, the point that emerges for determination in this appeal is:

“Whether the Tribunal erred in dismissing the petition against the third respondent?”

Point:

14 Respondent Nos.1 and 2 did not file appeal or cross – objections challenging the finding of the Tribunal on issue No.1. The Tribunal gave a finding that the car bearing No.AP 05 M 2003 is involved in the accident basing on the oral testimony of R.W.1 who is the driver of the car. P.W.1 is son, P.W.3 is wife of the deceased. Admittedly, these two witnesses have not witnessed the accident. Therefore, their testimony is no way helpful to establish whether the car bearing No.AP 05 M 2003 involved in the accident that occurred on 03.11.2010.

15 As per the testimony of P.W.2, the driver of the car bearing No.AP 05 M 2003 had driven the same in a rash and negligent manner and dashed against the cycle of the deceased. The Tribunal disbelieved the evidence of P.W.2. For one reason or the other, P.W.2 did not depose evidence in the criminal case pertaining to this accident. Even if the testimony of P.W.2 is taken into consideration, he did not inform the factum of accident to the police immediately after the accident. P.W.2 in unequivocal terms deposed that he knows the deceased Appalanaidu. When P.W.2 had acquaintance with the deceased, what prevented him to lodge a complaint with the police on 03.11.2010 itself intimating about the involvement of the car

bearing No.AP 05 M 2003 in the accident? Even assuming but not admitting that he has some reservations to go to the police station, what prevented him to inform about the accident to the family members of the deceased about the involvement of the car bearing No.AP 05 M 2003 in the accident? The material available on record, clearly reveals that the deceased was very much alive from 03.11.2010 to 20.11.2010 i.e. for a period of 17 days. It is not the case of the petitioners that the deceased was in unconscious state from the date of accident till the date of his death. In such circumstances, what prevented the deceased himself to disclose the number of the car which dashed against his cycle? If really P.W.2 had witnessed the accident, what prevented him to go to the hospital and inform about the car which caused the accident? R.W.1 who is the driver of the car kept quiet up to 12.03.2011. Nearly five months after the accident the first respondent approached the police Dinakonda and informed that he himself had driven the car bearing No.AP 05 M 2003, which belongs to the second respondent. On one hand, the first respondent filed counter denying the averments made in the petition. On the other hand, he voluntarily went to the police station and admitted that he himself has driven the car bearing No.AP 05 M 2003.

16 P.W.4 is the Investigating Officer in this case. His testimony clearly reveals that no one witnessed the accident. He further deposed that he did not examine and record the statement of P.W.2. If the testimony of P.W.4 is taken into consideration, it can be safely concluded that P.W.2 is not an eyewitness to the accident.

17 The Tribunal or the Court has to consider the oral evidence meticulously in order to ascertain the truthfulness or otherwise of the version put forth by the witnesses. The Court can accept the testimony of a witness if the same is cogent, convincing, coherent as

well as if it inspires the confidence of the Court. The material available on record clinchingly establishes that P.W.2 is not an eyewitness to the accident. In fact, no one has witnessed the accident. It appears that the Tribunal on considering all these aspects and also the conduct of the first respondent, allowed the petition by fixing the liability on respondent Nos.1 and 2 and by exonerating the third respondent from the liability.

18 No doubt, Motor Vehicles Act is a piece of beneficial legislation. The Tribunal or the Court has to interpret the provisions of the Act liberally keeping in mind the plight of the victims of the road accident. But that does not mean that the Court has to glibly swallow whatever the oral and documentary evidence before it without scrutinising the same meticulously.

19 The involvement of the car bearing No.AP 05 M 2003 was traced out nearly five months after the accident that too when the first respondent himself went to the police station. Having regard to the facts and circumstances of the case, the possibility of implicating the car bearing No.AP 05 M 2003 in the accident on coming to know that the same was insured with the third respondent – insurance company, cannot be ruled out completely. If the alleged crime vehicle was not insured with the third respondent, certainly, the respondent Nos.1 and 2 might not have agreed to implicate the first respondent in the criminal case. It appears that the car bearing No.AP 05 M 2003 was insured with the third respondent at the relevant point of time. Therefore, the claimants might have selected the car and implicate the same with an ulterior motive to claim compensation from the third respondent. The Tribunal has taken pains in order to ascertain the truthfulness or otherwise of the version put forth by the petitioners more particularly about the involvement of the car bearing No.AP 05 M 2003. The finding of the Tribunal that the

car bearing No.AP 05 M 2003 did not involve in the accident is supported by oral and documentary evidence available on record. It appears that the Tribunal fastened the liability on respondent Nos.1 and 2 for the simple reason that they themselves approached the police station five months after the accident. I am fully agreeing with the findings recorded by the Tribunal. It is not a fit case to fasten the liability on the insurer of the crime vehicle. The appeal lacks merits and bonafides and the same is liable to be dismissed.

20 In the result, the appeal is dismissed, confirming the judgment and award dated 27.09.2012 passed in M.V.O.P.No.558 of 2011 on the file of Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Vizianagaram. No order as to costs. As a sequel, miscellaneous petitions pending in this miscellaneous appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 10th September, 2015.

Kvsn