

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.66 of 2013

JUDGMENT:

This appeal is filed by the petitioners-claimants challenging the judgment and award, dated 19.07.2012 passed in M.O.P.No.450 of 2011 on the file of the Motor Vehicle Accident Claims Tribunal-cum-II Additional District Judge (FTC), at Parvathipuram.

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal, in brief, are as follows:

On 16.08.2010 at about 9.30 p.m. Bothu Swamy was proceeding to Raipur from his native place on his motor cycle. While driving the motor cycle, he dashed against the stationed lorry bearing No.AP 07 V 3775 at Gunnathotavalasa Road Junction, Bobbili Mandal. Due to the accident, Bothu Swamy (herein after referred as 'the deceased') sustained grievous injuries on various parts of the body and died. By the time of accident, the deceased was aged about 21 years and used to earn Rs.130/- per day. The petitioners are the parents of the deceased. The petitioners are dependants on the income of the deceased. The lorry bearing No.AP 07 V 3775 belongs to the respondent. Therefore, he has to pay the compensation to the petitioners. Hence, the petition.

4. The respondent filed counter denying the averments made in the petition including the manner of the accident, age and income of the deceased. The lorry was validly insured with the insurance company. The present petition is not maintainable for non impleading of the insurer of the lorry as a respondent. There was no negligence or rashness on the part of the driver of the lorry to cause accident. The accident occurred due to rash and negligent driving of the motor cycle

by the deceased. Hence, the petition may be dismissed.

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

1. Whether the alleged accident is self accident of the deceased or due to negligent parking of offending lorry by its driver, resulting in death of deceased?
2. Whether the petitioners are entitled for any compensation and if so to what extent and against whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, PW.1 was examined and Exs.A.1 to A.4 were marked. On behalf of the respondents, no oral evidence was adduced.

7. On appraising the oral and documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred only due to the rash and negligent driving of the motor cycle by the deceased and there was no negligence on the part of the driver of the lorry bearing No.AP 07 V 3775 and thereby dismissed the petition.

8. Feeling aggrieved by the judgment and award passed by the Tribunal, the petitioners-claimants preferred the present appeal.

9. Heard both sides and perused the material available on record.

10. The contention of the learned counsel for the petitioners-appellants is three fold: (1). The Tribunal failed to consider that the claimants are entitled to claim compensation as the petition is filed under Section 163-A of Motor Vehicles Act, (2) The first respondent failed to prove the negligence, if any, on the part of the

deceased, and (3). the finding of the Tribunal that the petitioners are not entitled to claim compensation is not sustainable either on facts or in law. ***Per contra***, learned counsel for the respondent submitted that the accident occurred due to the negligence of the deceased; therefore, the petition is not maintainable under Section 163-A of Motor Vehicles Act. He further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

11. Basing on the rival contentions, the point that arises for consideration in this appeal is as follows:

1. Whether the accident occurred due to the rash and negligent driving of the motor cycle by the deceased or rash and negligent act of the driver of the lorry bearing No. AP 07 V 3775?

12. **POINT** :To substantiate the stand, the petitioner No.2 examined himself as P.W.1 and got marked Exs.A1 to A4. I have carefully scanned the testimony of P.W.1, who is no other than the father of the deceased. A perusal of the chief-examination clearly reveals that P.W.1 did not witness the accident. In the cross-examination, in unequivocal terms, P.W.1 deposed that he did not witness the accident. He further deposed that he does not know at whose fault the accident took place. It is not mentioned in the petition that the accident occurred due to the rash and negligent act of the driver of the lorry bearing No. AP 07 V 3775. There is no whisper in the testimony of P.W.1 that the driver of the lorry bearing No. AP 07 V 3775 stationed the same negligently on the road, which is the sole cause for the accident. Exs.A3 and A4 legal notices are no way helpful to the petitioners to prove the negligence on the part of the driver of the lorry bearing No. AP 07 V 3775. A perusal of Ex.A2 reveals that the deceased died due to injuries sustained in the accident.

13. The claim petition is filed under Section 163-A of M.V. Act. If the petition is filed under Section 163-A of the Act, the petitioners need not prove negligence on the part of the driver of the crime vehicle. Section 163-A does not debar or prevent the

insurance company or the owner of the crime vehicle to establish negligence or contributory negligence if any on the part of the deceased. Admittedly, no one witnessed the accident. Admittedly, the petitioners belong to Mukkala village, whereas, the accident occurred at Gunnathotavalasa road junction centre near Bobbili on 16.08.2010. There is no possibility for P.W.1 to witness the accident. P.W.1 is the *de facto* complainant. It is not mentioned in Ex.A1 FIR that the accident occurred due to the negligent parking of the lorry bearing No. AP 07 V 3775 on the road by its driver. As per the recitals of Ex.A1 FIR, the deceased himself dashed against the lorry bearing No. AP 07 V 3775. The petitioners did not choose to examine eye witness to the accident or one of the villagers to establish that the lorry bearing No. AP 07 V 3775 was parked on the middle of the road so as to establish the negligence if any on the part of the driver of the lorry. As per the recitals of Ex.A1 FIR, the Station House Officer, Bobbili registered a case in Crime No.100 of 2010 under Section 338 IPC against the deceased. P.W.1 himself filed this document (Ex.A1) to substantiate their case. It appears that in Ex.A1 the number of the lorry is inserted subsequently. As observed earlier, there is no pleading in the petition that the accident occurred due to the rash and negligent act of the driver of the lorry. Any amount of oral evidence without pleading is of no avail. The oral and documentary evidence available on record clinchingly establishes that the accident occurred due to the rash and negligent driving of the motor cycle by the deceased himself and there was no negligence on the part of the driver of the lorry. The claimants are not entitled to file the petition and claim compensation under Section 163-A of M.V. Act as the deceased died due to his own negligence. The object of the Motor Vehicles Act is to provide immediate relief to the victims of the road accident. Motor Vehicles Act is a piece of social beneficial legislation. While interpreting the provisions of the Act, the Tribunal or the Court has to keep in mind the object with which M.V. Act was enacted. It is a settled principle of law that while interpreting the provisions of the beneficial legislation, the Court shall not ignore the basic principles of law.

14. At this juncture, the learned counsel for the petitioner has drawn my attention to the ratio laid down in

(i) **Oriental Insurance Co. Ltd., v Jhuma Saha** Wherein the Hon'ble apex court held at paras 10 and 11 (of AIR) as follows:

10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable.

11. Liability of the insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. **Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act, the question of the insurer being liable to indemnify the insured, therefore, does not arise.**

(ii) **Oriental Insurance Co. Ltd. Vs. Rajni Devi** wherein the Hon'ble apex Court held as under:

“10. In National Insurance Co. Ltd. v. Laxmi Narain Dhut {2007 (4) SCALE 36} it has been held:

Where the claim relates to own damage claims, it cannot be adjudicated by the insurance company. But it has to be decided by another forum i.e. forum created under the Consumer Protection Act, 1985 (in short ‘the CP Act’). Before the Tribunal, there were essentially three parties i.e. the insurer, insured and the claimants. On the contrary, before the Consumer Forums there were two parties i.e. owner of the vehicle and the insurer. The claimant does not come into the picture. Therefore, these are cases where there is no third party involved.”

The said principle has been reiterated recently in Premkumari v. Prahlad Dev {2008 (1) SCALE 531} and Oriental Insurance Co. Ltd. v. Prithvi Raj {2008 (1) SCALE 727}

11. The liability under Section 163-A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient. The heirs of Janak Raj could not have maintained a claim in terms of Section 163-A of the Act. For the said purpose only the terms of the contract of insurance could be taken recourse to.”

The principle enunciated in the cases cited supra is no way helpful to the petitioner.

15. Learned counsel for the petitioners submitted that the petitioners are entitled for compensation even under Section 140 of M.V. Act. In order to appreciate the contention of the learned counsel for the petitioners, it is not out of place to extract hereunder Section 163-B of the M.V. Act.

“Section 163-B of the Motor Vehicles Act lays down that where a person is entitled to claim compensation under Section 140 and Section 163-A, he shall file the claim under either of the said

Sections and not under **both**. Thus, the reading of **Section 140 and 163-A** of the **Motor Vehicles Act** makes it **abundantly** clear that one can come under any of these **sections** to claim interim compensation till his petition under **Section 166** is disposed of.”

16. A perusal of Section 163-B clearly demonstrate that the claimants are entitled to file a petition either under Section 163-A or under Section 140 of the Motor Vehicles Act. The claimants are not entitled to file a petition under Section 163-A as well as under Section 140 of the MV Act. The petitioners themselves have chosen to approach the Tribunal by filing the petition under Section 163-A of M.V. Act. Once the petition is filed under Section 163-A of MV Act, the petitioners are not entitled to claim compensation under Section 140 of MV Act. Therefore, there is no provision under the Act to convert the petition filed under Section 163-A of the Act to 140 of the MV Act.

17. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited supra, I am of the considered view that the petitioners are not entitled to claim compensation under Section 163-A of MV Act. The Tribunal has considered the oral and documentary evidence in right perspective and arrived at a conclusion that the claimants are not entitled to claim compensation even under Section 163-A of MV Act. The Tribunal has assigned cogent and valid reasons to its findings. There are no grounds much less valid grounds to interfere with the judgment and award of the Tribunal and therefore the appeal is lack of merits and the same is liable to be dismissed.

18. Accordingly, M.A.C.M.A. is dismissed. Consequently, miscellaneous petitions pending if any in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

26th August, 2015

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