HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1949 OF 2009

JUDGMENT:

The appellants-petitioners in O.P. No.264 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Mahabubnagar at Gadwal (for short, 'the Tribunal'), aggrieved over the dismissal order dated 25.03.2008, whereby and whereunder, the claim of Rs.5,00,000/- laid under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one K.Ravikumar @ Ravindra Nath, who is husband of appellant No.1 and father of appellant Nos.2 and 3, in a road accident was refused, preferred the present appeal under Section 173 of the Act seeking to set aside the order and decree on the ground that the Tribunal was not properly appreciated the evidence on record and on mere ground that the scene of occurrence panchanama did not contain the place of accident, though, it was lapsed on the part of the investigating officer.

2. The appellants herein, who are the wife and children of the said K.Ravikumar @ Ravindra Nath, are the petitioners, while respondent Nos.1 and 2 herein, who are the owner and insurer of the lorry bearing registration No.AP 22T 9666, are respondent Nos.1 and 2, respectively, in the original petition.

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

4. The fact-situation leading to the claim made by the petitioners is that on 12.02.2006 night, the said K.Ravikumar @ Ravindra Nath (deceased) proceeded on his scooter bearing registration No.AP 09B 4725 from Bhavani Dhaba towards Devarakadra to collect the amount and when he was returning and reached near Government Boys School on Deverakadra-Raichur Road, a lorry bearing registration No.AP 22/T 9666 driven in a rash and negligent manner at high speed, hit him from his behind, due to which he sustained head injury and died instantly. On the complaint made by petitioner No.1, concerned police registered the case and investigated into.

5. The petitioners, claiming that the deceased was earning Rs.500/- per day by running chicken centre in the name of Madhura Chicken Centre at Deverakadra and contributing the same for the maintenance of the family and, thus, they lost the dependency and sought a sum of Rs.5,00,000/-.

6. Both the respondents filed counter opposing the claim stating that the accident took place due to the rash and negligent driving of the deceased himself and, as such, he alone himself is responsible and sought to dismiss the claim petition.

7. The Tribunal, having framed three issues and examining P.W.1 and marking Exs.A.1 to A.9 on behalf of the petitioners and also examining R.W.1 and marking Ex.B.1 on behalf of respondent No.2, observing thus:

> "This Ex.A.1 was received in the police station on 13-2-2006 at 7.30 A.M. As per the investigation of the police through Ex.A.5 the accused was arrested on 15-2-2006. Further the accused after hitting the deceased went away by abandoning the crime vehicle at the place of occurrence. But this fact is incorrect by seeing not only the unmarked certified xerox copy of sketch of scene of offence but also the complaint of P.W.1, wherein it is not stated the presence of the crime vehicle at the place of occurrence. If it so, how the villagers came to know the involvement of the crime vehicle and inform the said fact to P.W.1 a day well in advance to the alleged surrender of the accused. So it is nothing but introduced the crime vehicle subsequently. Hence the petitioners are miserably failed to prove the involvement of the crime vehicle in the accident. Then it is nothing but purely hit the run case. Hence the present issue is partly answered in favour of the petitioners and partly against to them."

dismissed the claim petition.

8. It is no doubt true, except the statement of P.W.1 in Ex.A.1-F.I.R. that the villagers at about 5-00 a.m. early morning of 13.02.2006 came and informed the name of the driver and the lorry number, but no other material is available as to how the villagers could give the lorry number and the name of the driver. In the sense, her statement was not clear as regards whether the lorry was found

nearby the place of occurrence. However, in the charge sheet marked as Ex.A.5, the investigating officer makes a mention that the accused abandoned the vehicle after hitting the scooter and fled away from there. But when the Motor Vehicles Inspector's report is seen against the relevant column, he records that there were no mechanical defects on his inspection of the lorry and he has shown the place of inspection "at the police station" Devarakadra. Thus, the statements are not reconcilable, but however, P.W.1-wife of the deceased, certainly, would not be in a position to speak about the nature of the vehicle or the number of the vehicle and the investigating officer is the relevant witness to speak about whether the vehicle was really available at the place of accident and whether failure to show the presence of the vehicle in the place of scene of occurrence was by inadvertence or whether the vehicle was not at all available there and if so, as to when and where the vehicle was seized for the inspection of Motor Vehicles Inspector. Even the evidence of Motor Vehicles Inspector is also relevant in the present context.

9. Hence, it is a matter to be remitted to the Tribunal for disposal by affording opportunity to both sides to lead further evidence. Since the claim relates to the year 2006, the Tribunal is directed to dispose of the original petition within six (6) months from the date of receipt of a copy of this judgment.

10. Therefore, the instant appeal is allowed and the order and decree dated 25.03.2008 passed by the Tribunal in O.P. No.264 of

2006 on its file is hereby set aside and the matter is remitted to the Tribunal for disposal as indicated above. There shall be no order as to costs.

11. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

October, 2016

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