

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1575 of 2009

JUDGMENT:

Aggrieved by the Award dt:05.09.2007 in M.V.O.P.No.917 of 1999 passed by the Chairman, M.A.C.T-cum-III Additional District Judge (FTC), Mahabubnagar at Gadwal (for short 'the Tribunal'), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that in on the early morning of 21.03.1998 the deceased—Seshi Reddy was returning to his house from Shanthinagar village on his TVS Moped bearing No.AP 21 8411 and when he passed Paipad stage, a tractor with trailer bearing No.AP 21 C 1608 and AP 21 C 1609 respectively, came in opposite direction and dashed the deceased. In the resultant accident, the deceased sustained injuries and succumbed to injuries while undergoing treatment on 30.03.1998. It is averred that the accident was occurred due to rash and negligent driving by the driver of tractor-cum-trailer and due to sudden demise of the deceased, the claimants who are his dependants became destitutes. On these pleas, they filed M.V.O.P.No.917 of 1999 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2 who are owner and insurer of the offending lorry and claimed Rs.3,00,000/- as compensation.

b) R1/owner remained *ex parte*.

c) R2/Insurance Company filed counter *inter alia* contending that accident as narrated had not taken place and the deceased was not involved in the accident. Finally, R2 contended that compensation claimed by claimants is highly excessive and exorbitant and thus prayed to dismiss the OP.

d) During trial, PW.1 was examined and Exs.A1 to A6 were marked on behalf of claimants. No oral or documentary evidence was marked on behalf of respondents.

e) After full-fledged trial, the lower Tribunal rejected the case of claimants on two main grounds:

i) Firstly that there is a conflict with regard to the date of accident. The Tribunal observed that in the pleadings the claimants mentioned that on 20.03.1998 the deceased had been to Shanthi Nagar and on 21.03.1998 early morning while he was returning on his TVS Moped bearing No.AP 21 8411, he was hit by the tractor-cum-trailer bearing No.AP 21 C 1608 and AP 21 C 1609 after passing Paipad bridge. However, in the oral evidence of PW.1 she stated as if the deceased went to Shanthi Nagar on 21.03.1998 and while he was returning home on his TVS Moped, the accident took place at about 7:30am and therefore, there were two conflicting dates of accident.

ii) Secondly, the Tribunal observed that as per Ex.A.1—FIR, it was a hit and run case and no proper evidence was forthcoming as to the involvement of the crime vehicle in the accident and in the charge sheet it was not clear as to how the crime vehicle was identified as the vehicle that hit the deceased.

Hence, the appeal by claimants.

3) The parties in the appeal are referred as they stood before the lower Tribunal.

4) Heard arguments of Sri K.V.Raghuveer, learned counsel for appellants/ claimants and Sri G.Vasantha Rayudu, learned counsel for R2/Insurance Company. Notice sent to R.1 was not yet returned.

5 a) Fulminating the Award learned counsel for appellants/claimants argued that absolutely there was no conflict with regard to the date of accident and as per the pleadings as well as the evidence of PW.1, the accident was occurred only on

21.03.1998 and even the Head Constable who was on patrolling duty found the dead body near Paipad village on 21.03.1998 at about 10:30pm. Therefore, he argued, there can be no doubt regarding the date of accident.

b) Nextly, with regard to the identity of the crime vehicle he argued that the Tribunal erred in holding that there was no clarity in the charge sheet as to how the police could identify the tractor-cum-trailer bearing Nos.AP 21 C 1608 and AP 21 C 1609 respectively as the vehicle which hit the deceased when as per FIR it was a hit and run case. He would argue that as per Ex.A.2—charge sheet, the police during the course of investigation identified the tractor-cum-trailer as the crime vehicle basing on the eye witness account of LWs.7 and 8 and therefore, merely because the FIR did not contain descriptive particulars of the crime vehicle it cannot be concluded that it was a case of hit and run. However, unfortunately the Tribunal held otherwise. Therefore, he would urge, an opportunity may be afforded to the appellants/claimants to examine the LWs.7 and 8 who are cited as eye witnesses in the charge sheet to establish the involvement of the tractor-cum-trailer in the accident by remanding the matter to the Tribunal.

6) In oppugnation learned counsel for 2nd respondent/ Insurance Company supported the Award and sought to dismiss the appeal.

7) In the light of above divergent arguments, the point for determination is:

“Whether there are grounds to remand the matter to the lower Tribunal?”

8) **POINT:** On perusal of the record, it must be held that the lower Tribunal faltered in holding that there is a conflict about the date of accident. In the claim petition the pleadings are to the effect that on 20.03.1998 the deceased went to Shanthi Nagar village on his personal work and on 21.03.1998 in the early morning while he was returning home on his TVS Moped, he met with accident when he was hit by a tractor-

cum-trailer bearing Nos.AP 21 C 1608 and AP 21 C 1609 respectively. So the pleadings would show that the accident was occurred on 21.03.1998. While-so in the evidence of PW.1, she deposed as if her husband went to Shanthi Nagar on 21.03.1998 itself and while he was returning home on his TVS Moped on the same day he met with accident. So as per evidence also it was the emphatic case of the claimants that the accident was occurred on 21.03.1998. Be that as it may, as per FIR the Head Constable who was on patrolling duty found the dead body of the deceased with injuries by the side of road near Paipad village on the night of 21.03.1998 at about 10:30pm. So in the pleadings and evidence there is no conflict about the date of occurrence of the accident. In fact the respondent also did not dispute about the deceased dying in a motor vehicle accident. Its contention was that it was a hit and run case wherein an unknown vehicle hit the deceased. Therefore, the first ground on which the Tribunal dismissed the claim petition is unsustainable.

9) Sofaras the involvement of the tractor-cum-trailer bearing Nos.AP 21 C 1608 and AP 21 C 1609 respectively in the accident is concerned, in Ex.A.1—FIR, the informant who was the Head Constable of the patrolling party did not mention about the involvement of any particular vehicle in the accident, rightly because, the crime vehicle was not stopped at the accident spot. However, in the charge sheet the Investigating Officer mentioned that the tractor-cum-trailer bearing Nos.AP 21 C 1608 and AP 21 C 1609 respectively was involved in the accident. Though he has not specifically mentioned as to how he could trace the said vehicle as crime vehicle, but he referred LWs.7 and 8 as eye witnesses to the accident in the Appendix of evidence. In that context, learned counsel for appellants/claimants submits that the claimants may be given an opportunity to examine the eye witnesses to establish that the tractor-cum-trailer bearing Nos.AP 21 C 1608 and AP 21 C 1609 respectively was indeed involved in the accident. This Court finds force in the above submission. The Motor Vehicle Act is a

beneficial legislation and the victims of the accident shall be given due opportunity to prove the accident and the vehicle's involvement in the said accident so as to enable them to claim just compensation from the concerned.

10) In the result, this M.A.C.M.A. is allowed and the Award dt:05.09.2007 in M.V.O.P.No.917 of 1999 on the file of the Chairman, M.A.C.T-cum-III Additional District Judge (FTC), Mahabubnagar at Gadwal is set aside and the matter is remanded to the lower Tribunal with a direction that the lower Tribunal shall give an opportunity to the appellants/claimants to examine the eye witnesses as mentioned in the Ex.A.2—charge sheet to establish the factum of involvement of the crime vehicle in the accident and also to give an opportunity to the respondent/Insurance Company to cross-examine those witnesses and to adduce contra evidence, if any, and dispose of the matter on merits within two(2) months from the date of receipt of copy of this judgment. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 14.06.2016
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