

THE HON'BLE SRI JUSTICE U. DURGA PRASAD

RAO

CRP No.1112 of 2016

Oral Order:

This Civil Revision Petition has been filed by the petitioners/plaintiffs aggrieved by the endorsement dated 17-12-2015 returning I.A.G.R.No.7200 of 2015 in O.P.No.87 of 2015 by the Motor Vehicles Accidents Claims Tribunal-cum-District Court, Srikakulam (for short "the Tribunal").

The petitioners herein filed O.P.No.87 of 2015 before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 claiming compensation against respondents 1 and 2 therein, on the plea that on 5.3.2013 when the deceased along with his colleague N. Syama Sundaram was proceeding on a motor cycle bearing No.AP 30 J 4495 from Sankili towards Rajam and when they reached near Kumari Agraharam village on Palakonda Rajam tar road at about 21.20 hours, a lorry bearing No.AP 20U 1049

came in opposite direction in a rash and negligent manner at high speed and dashed against the motor cycle, and caused death of both rider and the pillion rider of the motor vehicle. The O.P. was filed against respondents 1 and 2 who are driver and owner of the offending vehicle, claiming compensation.

While so, pending O.P. the petitioners herein filed the unregistered I.A.G.R.No.7200 of 2015, under Order 1 Rule 10 CPC seeking to add Parry's Sugar Industries as 3rd respondent in the O.P on the ground that after filing of the above O.P., they came to know that the offending lorry AP 20U 1049 was under lease of the Parrys Sugar Industries Limited for transportation of sugarcane and hence the said Sugar Industry needs to be added as 3rd respondent in the O.P.

By the impugned order dated 17-12-2015, the Tribunal returned the petition with an endorsement to

file proof of hiring of the vehicle. The petitioners represented that proof will be filed at the time of hearing. However, the Tribunal returned the matter on 31-12-2015 with an endorsement that order dated 17-12-2015 was not complied with. Aggrieved, the instant Civil Revision Petition has been filed by the petitioners.

Learned counsel for the petitioners submits that whether the vehicle was under hire of the proposed respondent or not is an issue on which the petitioners will adduce sufficient evidence at the time of hearing of the matter and therefore the Tribunal ought to have registered the I.A. and issued notice instead of insisting for proof at this stage.

On the other hand, learned counsel for the respondents submits that the petitioners have not filed any scrap of paper to show that the vehicle was under hire of the proposed 3rd respondent and therefore the Tribunal rightly returned the petition, and that the petitioners without complying with the

said order filed the present Civil Revision Petition, which is not maintainable.

In the light of the rival contentions, the point that arises for determination is - Whether there are merits in the petition to allow ?

It is the submissions of the learned counsel for the petitioners that the proposed 3rd respondent took the vehicle on hire for transporting the sugarcane to their factory and the vehicle was under its hire on the date of accident and therefore the 3rd respondent is a necessary party to the proceedings. The petitioners have not produced any proof at this stage. It is true that the burden is on the petitioners to establish that the proposed 3rd respondent took the vehicle on hire. However, in my considered view, the Tribunal ought to have registered the petition and issued notice to the proposed respondent to put up its contest in the matter. It is only when the proposed 3rd respondent denied the

hiring the vehicle, the burden falls on petitioners to establish the said fact. So, at this nascent stage, it is not apt to return the petition insisting proof.

In the result, the Civil Revision Petition is allowed by setting aside the impugned endorsement dated 17-12-2015 with a direction to the Tribunal to register the I.A. and issue notice to the proposed party and decide the matter on merits as per law. No costs. Miscellaneous Petitions if any pending shall stand closed.

JUSTICE U. DURGA

PRASAD RAO

Dated: 27-4-2016

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