

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1441 OF 2009

JUDGMENT:

Aggrieved over the order of dismissal of claim petition, dated 28-04-2008, in O.P. No.804 of 2005, passed by the learned Chairman, Motor Accident Claims Tribunal - cum - District Judge, Nizamabad (for short 'the Tribunal'), legal representatives of the deceased - Kancherla Narayana preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. The appellants, who are wife and parents of the deceased, are the petitioners, while respondent Nos.1 and 2, who are owner and insurer of tractor bearing registration No.AP 25J 0577, respectively, are respondents as such in the OP before the Tribunal.

3. For the sake of convenience, the parties herein are referred to as they were arrayed in the OP.

4. The facts, in brief, are that the petitioners sought a compensation of Rs.6,00,000/- under Section 166 of the Act, stating that while the deceased along with his brother-in-law was returning to Ravutla village from Armoor on 13-05-2005, on a motorcycle bearing registration No.AP 25U 3790, which was driven by the deceased, and at about 8.00 p.m., when they reached outskirts of Bada Bheemgal village, a tractor bearing registration No.AP 25J 0577 coming in opposite direction driven by its driver at high speed in a rash and

negligent manner, hit the motorcycle, due to which, both of them fell down and the deceased died instantly.

i) The petitioners claiming that the deceased was 23 years, working as motor winding mechanic and also as washer man, earning Rs.10,000/- per month and was contributing his entire earnings for the maintenance of family, sought the aforesaid sum from both the respondents, who are owner of the tractor and its insurer, respectively.

5. Respondent No.1, owner of the tractor, remained *ex parte* before the Tribunal.

6. Respondent No.2 - insurer filed its counter taking specific plea as to the involvement of the tractor, the driver holding valid driving license to drive the tractor and, finally, sought to dismiss the claim petition.

7. The Tribunal has framed the following three issues basing on the aforesaid pleadings.

- “1) Whether the accident has taken place due to rash and negligent driving of tractor bearing No.AP-25/J-0577?
- 2) Whether the petitioners are entitled to compensation?
If so, to what just amount and against whom?
- 3) To what relief?”

8. During inquiry, petitioner No.1 besides examining herself as PW.1, has examined one Shaik Babu as PW.2, who claims to be an eye-witness to the accident and D. Chinni Krishna as PW.3 to prove

the income of the deceased, and marked Exs.A-1 to A-7. On behalf of respondent No.2 - Insurer, one P. Satyanrayana, Senior Assistant in its local branch, was examined as RW.1 to prove that the tractor was not at all involved in the accident, and marked Exs.B-1 to B-4, which are copy of insurance policy, letter addressed by Mandal Revenue Officer, dated 18-10-2005, copy of first information report and copy of scene of occurrence panchanama along with rough sketch of scene of offence, respectively.

9. The Tribunal has elaborately dealt with the evidence on record on issue No.1. The Tribunal has discarded the evidence of PW.2 on the main ground that his statement recorded by the police one-month after taking place of the accident and also on the ground that PW.2 did not even lodge complaint as to taking place of the accident, and weighed the answers given by PW.1 in her cross-examination as she admitted that she gave statement to the police that her husband - deceased fell down from the motorcycle and died, and that her brother-in-law Srinivas after verifying and visiting the scene of occurrence, gave complaint to the police and also made a statement to the police that the deceased fell down from the scooter and died due to his own negligence, and even PW.1 admitted that in Ex.A-3 - inquest report, there is no mention about the involvement of the tractor in the accident, thereby dismissed the claim petition.

10. Aggrieved over which the present appeal is preferred to set aside the order and decree passed by the Tribunal and to allow the claim petition.

11. It is stated in the ground that the Tribunal ought to have taken note of the fact that first information report (Ex.B-3) shows the taking place of the accident, and later, on completion of investigation, charge sheet was filed by the Investigating Agency and, therefore, the Tribunal ought not to have presumed the things and observed that the vehicle was implicated to get compensation and, therefore, that finding recorded by the Tribunal is erroneous.

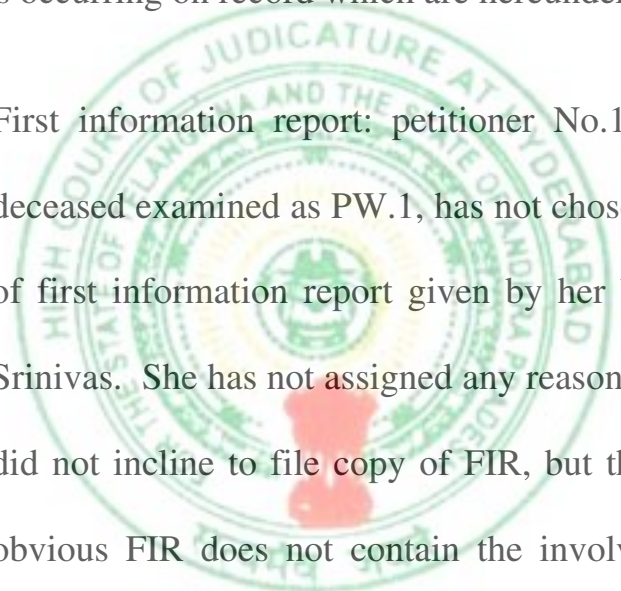
i) It is stated that it is for the criminal Court to decide the issue whether the vehicle was implicated or not, and the Tribunal was not competent to decide the said issue.

ii) It is further stated that Ex.A-4 - Motor Vehicle Inspector's report reveals that there was an accident on 13-05-2005 due to rash and negligent driving of the tractor bearing registration No.AP 25J 0577 and, therefore, the Tribunal was not right in brushing aside the same, hence, sought to set aside the order and decree under challenge.

12. Heard Sri K. Jagadishwar Reddy, learned counsel for the appellants, and Sri Srinivasa Rao Vutla, learned standing counsel for respondent No.2 - Insurer. Though, service was completed on respondent No.1, owner of the vehicle, none appears for him.

13. Perused the order and the evidence on record let in by both the parties, both, oral and documentary.

14. A thorough re-appraisal of evidence on record, would lead to the conclusion that the manner in which the accident said to have taken place, as projected by the petitioners, is dubious, and in order to make a wrongful gain, claim petition was filed with all incorrect allegations in arriving at such conclusion. There are strong circumstances occurring on record which are hereunder:

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- i) First information report: petitioner No.1, wife of the deceased examined as PW.1, has not chosen to file copy of first information report given by her brother-in-law Srinivas. She has not assigned any reason as to why she did not incline to file copy of FIR, but the reasons are obvious FIR does not contain the involvement of the tractor shown as the crime vehicle driven at high speed in a rash and negligent manner and hit the motorcycle of the deceased, on which, not only the deceased, said to have traveled, but also his brother-in-law as per the statement of facts projected by the petitioners. Thus, non-filing of copy of FIR is nothing but either to screen the truth or to suppress the truth in order to make a wrongful gain. Thus, the petitioners approached the Tribunal by filing the claim petition with unclean hands.

- ii) The very admissions made by PW.1 in her cross-examination would completely condemn her claim petition, which, the Tribunal has heavily commented. On perusal of answers given by her in her cross-examination, thus:

“..... My statement was recorded by the police. It is true that I gave statement to the police that my deceased husband himself fell down from the motor cycle and died. It is also true that my brother-in-law Sreenivas also gave statement to the police that the deceased fell down from the scooter and died with his own negligence. It is true that in Ex.A.3 inquest report, there is no mention about the accident with the tractor.....”

would completely condemn her stand.

- iii) Though, RW.1 was not an eye-witness to the accident, but the insurer is cautious enough in filing copy of first information report marked as Ex.B-3 and copy of scene of offence panchanama along with rough sketch of scene of occurrence as Ex.B-4. Both the documents would make it abundantly clear beyond any shadow of doubt that not only the deceased caused the accident due to his own negligence and died, but also the very involvement of the tractor which is now shown as crime vehicle. The accident had taken place on 13-05-2005; the

inquest (Ex.A-3) was conducted on 14-05-2005; but the statement of motor vehicle inspector's report shows that the motor vehicle inspector conducted the inspection on 07-06-2005, which was more than a month later. Therefore, the contention of the learned counsel for the appellants that criminal Court is competent to decide the issue as to the involvement of the alleged crime vehicle, but not the Tribunal is without any merit and, in fact, such a ground is inappreciable.

- iv) The letter, dated 18-05-2005, addressed by the Mandal Revenue Officer, Udayagiri, by name, Sri V. Sreedhar Rao, to the Station House Officer, Bheemgal Mandal, Nizamabad District, and the Civil Assistant Surgeon, Community Health Centre, Armour Post, Nizamabad District, would reflect that petitioner No.1, has put in a representation stating that her husband, Sri Narayana, who is deceased herein, belonging to Ravutla village of Sirikonda Mandal in Nizamabad District, working as coolie in Bheemgal Mandal, died on 13-05-2005, due to road accident near Bada Bheemgal village while he was returning home to Ravutla village after completion of coolie work, and thereby requested for grant of

financial assistance under 'Apathbandhu Scheme'.

Therefore, requested the Station House Officer as well as Civil Assistant Surgeon to send original copies of first information report, postmortem report and inquest report immediately. In case, the accident did really take place, as projected by the petitioners, with the involvement of the tractor, such a representation would not have put in by petitioner No.1 to the revenue authorities seeking financial assistance under 'Apathbandhu Scheme'.

Thus, the aforesaid circumstances are sufficient enough to reject the stand of the petitioners and to dismiss the claim petition which the Tribunal did. The order passed by the Tribunal is based on process of appreciation of evidence in accordance with evidentiary rule and well-reasoned. Therefore, it does not warrant any interference at all, as no legal infirmity can be inferred or found.

15. There is no merit in the appeal and, accordingly, the appeal is dismissed. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

September 06, 2016.

Mgr