

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1968 OF 2009

JUDGMENT:

The appellants-petitioners in M.V.O.P. No.1070 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Warangal (for short, 'the Tribunal') aggrieved over the dismissal order dated 19.07.2003, whereby and whereunder, the claim of Rs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one M.Balaiah, who is husband of appellant No.1 and father of appellant Nos.2 and 3, in a road accident, preferred the instant appeal. The Tribunal dismissed the said petition on the ground that the appellants already moved the Commissioner for Workmen's Compensation and the Labour Officer, Warangal, who awarded Rs.1,42,680/- as compensation.

2. The appellants herein, who are the wife and children of the said M.Balaiah, are the petitioners, while respondent Nos.1 and 2 herein, who are the owner and insurer of the lorry bearing registration No.ADT 9328, 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 occurring in the instant case is that the said M.Balaiah (deceased) on 04.04.1999, went on duty as a Lineman to check the transformer and was returning in his departmental lorry bearing registration No.ADT 9328 and when it reached outskirts of Pasara village, since the driver drove it in a rash and negligent manner, he fell down and received injuries and succumbed to injuries. The petitioners, claiming that the deceased was working as a Lineman in Andhra Pradesh State Electricity Board, earning a salary of Rs.7,000/- per month, sought Rs.5,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle.

5. Respondent No.1, claiming that the compensation sought was excessive and unsustainable, requested to dismiss the claim petition.

6. Respondent No.2-Insurance Company opposed the claim raising various pleas.

7. Basing on the pleadings, the Tribunal framed three issues about the responsibility for the accident.

8. During enquiry, petitioner No.1, besides examining herself as P.W.1, examined one B.Sambashivudu, an eyewitness to the accident, as P.W.2 and marked Exs.A.1 to A.4; whereas, respondent No.1 was examined as R.W.1 and marked Exs.B.1 to B.5 and no

witnesses were examined and no documents were marked on behalf of respondent No.2-Insurance Company.

9. The Tribunal, on the main ground that it has come to the light that the claimants made a claim before the Commissioner for Workmen's Compensation and the Labour Officer, Warangal, awarded a sum of Rs.1,42,680/- as compensation, proved through the evidence of P.W.1 and Exs.B.1 to B.5, which are the order of the Commissioner, receipt about the payment of money before the Commissioner and certificate issued by the Commissioner certifying that the payment was made by the department, observing that the petitioners have not agitated against the quantum of compensation granted by the Commissioner and the remedy for compensation before the Tribunal is only alternative and there cannot be any two claims for the same accident, dismissed the claim petition.

10. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal, though, the learned counsel for the petitioners relied on a ruling of a Division Bench of the High Court of Punjab and Haryana in **Yash Pal Sharma v. Girdhari Lal**¹, did not refer to it and decided the claim petition, more particularly, when no claim at all was made by the petitioners by moving the authority under the Workmen's Compensation Act, and, therefore, made a request to set aside the order and decree and grant

¹ 2001 AIHC 2497 (Punjab and Haryana High Court)

compensation by giving credit to the amount of Rs.1,42,680/-, determining just and adequate compensation.

11. Heard Sri A.Ravinder learned counsel for the appellant-petitioner, and Sri M.Jeevan Reddy, learned Standing Counsel for respondent No.2-Insurance Company. Though, service was completed on respondent No.1-owner, none appears for him.

12. Exs.B.1 to B.3 were relied on by the Tribunal in recording finding that the petitioners moved the authority under the Workmen's Compensation Act and when once the compensation was awarded by the Commissioner for Workmen's Compensation and the Labour Officer, Warangal, it is not open for the petitioners to lay a claim again under Section 166 of the Act.

13. Respondent No.1-Assistant Divisional Engineer of APTRANSCO, Warangal, was examined as R.W.1, he asserts in chief-examination that the petitioners laid claim before the Workmen's Compensation Act for Rs.1,42,680/- and the same was awarded by the Labour Officer, Warangal under Ex.B.1 and the amount was deposited under Ex.B.2 and a certificate was issued therefor under Ex.B.3 and that the claim is not legal. But, he was not cross-examined by the learned counsel for the petitioners before the Tribunal and it was recorded as 'nil'. But the evidence of R.W.1 is not specific as to whether the petitioners moved the Commissioner by laying a claim and whether the claim was adjudicated upon by

conducting an enquiry, and, in the absence of such details, which would have a bearing on the claim herein, certainly, it would be difficult to arrive at whether the petitioners laid claim before the Commissioner seeking a particular sum as compensation or whether the amount of Rs.1,42,680/- was paid on the intimation given by respondent No.1 through the concerned head of the department. Thus, R.W.1's evidence is not clear to clarify the said issue.

14. A perusal of the order under challenge, the Tribunal, somehow, did not advert to the aforesaid ruling relied on by the learned counsel for the petitioners.

15. Turning to Exs.B.1 to B.3, Ex.B.1 is a notice dated 24.09.1999 it bears No.C/767/99. After compensation was worked out, the next paragraph which constitutes the penultimate paragraphs reads thus:

"The above amount is assessed basing on the particulars furnished by you and without prejudice to the right of the workmen/dependents to claim further amount, if in case, happens to prove any factor on his behalf enhancing such compensation amount subsequently."

16. Therefore, unless the adjudicatory order or the proceedings and the number of relevant proceedings, under which the compensation was determined in case any claim was made by the

petitioners/appellants herein, are shown, it is difficult to arrive at a correct conclusion. Even Exs.B.2 and B.3 also would not clarify the same. Therefore, it is a matter, which, invariably, has to be remitted to the Tribunal to decide on two aspects. Firstly, to afford opportunity to both parties to lead further evidence in the direction of whether or not the claimants made a claim before the Commissioner of Workmen's Compensation Act and adjudicated upon or whether the amount of Rs.1,42,680/- was paid on the intimation of respondent No.1's department. Secondly, in case, it is found that no claim at all was made by the petitioners, as per the ruling of the Punjab and Haryana High Court in case **Yash Pal Sharma's** case (supra 1) to determine the compensation, if it is found that there was negligence on respondent No.1's driver, in which case, to adjust the amount covered under Exs.B.1 to B.3, in the compensation that would be determined, so as to grant the balance amount.

17. Since the claim relates to the year 1999, it is desirable to direct the Tribunal to dispose of the original petition within six (6) months from the date of receipt of a copy of this judgment.

18. Therefore, the instant appeal is allowed and the order and decree dated 19.07.2003, passed by the Tribunal in M.V.O.P. No.1070 of 1999 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.

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

A. SHANKAR NARAYANA, J

21st October, 2016

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