

THE HON' BLE DR. JUSTICE B.SIVA SANKARA RAO

MACMA No.258 OF 2010

JUDGMENT:

The appellants-claimants, no other than wife and two minor children of the deceased Syed Mastan aged about 30 years as on the date of accident 23.10.2007 maintained the claim under Section 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*), on the file of the learned Chairman, Motor Accidents Claims Tribunal-cum-IV Addl. District Judge, Kadapa (*for short, 'Tribunal'*), for a claim of Rs.5,00,000/- against the owner and Insurer of the crime vehicle-lorry bearing No.AP 04 U 07281, for said Syed Mastan succumbed to injuries in the accident allegedly caused due to rash and negligent driving of the driver of the said lorry while the deceased was going to attend calls of nature. On contest by the 2nd respondent-Insurer from the 1st respondent-owner of the lorry remained *exparte* and from the evidence on record, the tribunal held that the statement of the P.W.2 none other than brother of the deceased before police clearly discloses that the vehicle bearing No.AP26 1169 was involved in the accident, whereas the chargesheet filed after four months mentioning the vehicle bearing No.AP04 U 7281 as if involved in the accident, instead of what P.W.2 stated involved of the vehicle bearing No. AP 26 1169 and same is not credible and reliable. Further even the Ex.A.5 MMI report issued by the Motor Vehicle Inspector, who ought to have inspected the vehicle immediately after the accident, by inspecting the vehicle bearing No.AP 04 U 7281 which is after four months of the accident and same is also cannot be given credence. Even the rebuttal evidence of 2nd respondent-Insurer also proving that the alleged vehicle of 1st respondent was not involved in the accident. The tribunal further held that even the version of the P.W.2 brother of the deceased who at the time of conducting inquest (Ex.A.2 inquest report) including

P.W.1 wife of deceased categorically stated before inquestdars the number of the vehicle involved in the accident as AP26 1169 and not AP 04 U 7281. Whereas the P.W.1 who immediately after the accident visited the scene of offence and noticed the vehicle could not be able to state the number of the vehicle which involved in the accident. The tribunal further held that when the vehicle involved in the accident is in doubt, the question of deciding rash and negligence and other reliefs does not arise and with the findings supra dismissed the claim by its award dated 23.09.2009.

2. Impugning the said dismissal award, the claimants preferred the appeal with the contentions in the grounds of appeal that the tribunal ought not to have held that the lorry bearing No.AP 26 1169 was only involved in the accident and not AP 04 U 7281, merely basing on wrong mention of vehicle at the time of complaint by oversight, that the tribunal ought to have considered the evidence of P.W.2 brother of the deceased who stated during the examination the lorry bearing No.AP04 U 7281 involved in the accident and ought to have considered out of shock he might have mentioned wrong number before the police, that the tribunal should have considered Exs.A.4 chargesheet and Ex.A.5 MVI report which are clearly showing the vehicle number as AP04 U 7281 as involved in the accident, that the tribunal erred in not granting compensation though there is ample evidence on record and failed to see that the respondents failed to show only the vehicle bearing No.AP 26 1169 alone was involved in the accident, hence the claimants pray to set aside the award of the tribunal by granting compensation as prayed for. The learned counsel for appellants-claimants reiterated the same during the course of hearing.

3. Whereas, the learned counsel for the Insurer, from the 1st respondent-owner though served failed to attend, contended that the award of the tribunal holds good and there is nothing to interfere with the

award of the tribunal by this Court while sitting in appeal. Hence to dismiss the appeal.

4. Heard and perused the material on record.

5. The decision placed reliance by the learned counsel for the claimants of United India Insurance Company Limited Vs. Mohd.Hussain¹ and Bimla Devi Vs. Himachal Road Transport Corporation² no way apply to the present case for the reasons that in the case on hand vehicle number is positively mentioned in the report with no lapse of time by the alleged eye witness no other than the brother of the deceased P.W.2 which is the basis in registering the crime and taking up investigation.

6. The Apex Court in National Insurance Company Ltd. Vs Rattani and others³ observed that there is no further necessity of proof by the Insurer but for relying upon the contents of the FIR placed reliance on by the claimants if the same is a basis of the plea. The Ex.A.1 FIR is relied upon by the claimants. The factum of Ex.A.1 FIR issued basing on the report of P.W.2 is not in dispute. It is not even his case of he did not notice the number of the crime vehicle. Even it is hardly believable of the presence of P.W.2 while his brother the deceased was returning after attending calls of nature and allegedly witnessed the occurrence. Had it been true in giving positively the specific vehicle number as if noticed, the question of his giving a wrong number altogether for not even one or two digits or letters different but in entirety with no correlation but for the letters AP only tallied, is mentioned later for claiming compensation. In the new number there is introduced 'U' which is silent in the first mentioned vehicle number. Thereby the contention in the appeal grounds of the claimants that the P.W.2 should have been in shock and might have mentioned wrong

¹ 2012(5) ALD 375

² 2012 4 ALD 147 SC

³ (2009) 2 SCC 75

number in the report is absurd to believe for no worth explanation much less immediately after the said report by him by any statement to the police much less by exhibiting for nothing reflecting even in the chargesheet. There is no basis even for the police to mention altogether a different number of the vehicle involved in the chargesheet and the Investigating Officer not even examined much less any of the persons whose version for the chargesheet is a basis to clear the cloud. Thereby there is nothing to consider the evidence of P.W.2 contrary to his version in Ex.A.1 FIR and that is also the cross-examination of P.W.2 by the Insurer that has to be relied as rightly concluded by the tribunal. In fact, the circumstances of the case as also referred supra in the discussion indicates practically a case of hit and run and some vehicle chosen to implicate, might be for the same in having insurance or otherwise another vehicle was implicated to get more compensation if possible rather showing hit and run case. The tribunal is right in dismissal of the claim however the fact remains the death is due to the injuries in the accident and there is some vehicle involved which is unknown and untraced with certainty. Then it is only to be considered as hit and run case as answered by this Court in MACMA No.2072 of 2011 dated 17.10.2014 pleased to decide the claim u/ sec. 161 to 163 of the M.V. Act despite a special provision made of special machinery for hit and run cases, the tribunal also got jurisdiction in awarding Rs.25,000/- no doubt for the South India as per the scheme, it is the United India Insurance Company Limited that is designated to pay the claims under hit and run cases.

7. Having regard to the above, the appeal is allowed by setting aside the award of the tribunal. The 2nd respondent Insurer is directed to pay Rs.25,000/- with interest at 7.5%p.a. from the date of claim petition, and recover from the United India Insurance Company Limited for

reimbursement of said amount, by giving further opportunity to the claimant for any further compensation to claim and consider if at all approach the special machinery provided through revenue authorities in awarding compensation, for Rs.25,000/- in case of death is not the maximum limit if at all to consider further so to decide. No costs. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: .12.2016
Vvr

