

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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C.M.A. No.2664 of 2004

JUDGMENT:

The claimants in M.V.O.P.No.3 of 1998 filed claim petition claiming a compensation of Rs.2,14,000/- for the death of one Ahmed Hussain in a road accident that took place on 11.07.1993. First petitioner before the Tribunal is the wife, petitioner Nos. 2 to 4 are the children and 5th petitioner is the mother of the deceased. It was alleged that on 11.07.1993 when the lorry driven by the deceased reached Tank Bund of Ulindakonda, he stopped the lorry for nature of calls and when he and his cleaner were about to get down from the lorry, another lorry bearing No.TN A5-Z-4271 came from Dhone side in opposite direction with high speed and on wrong side and hit the stationed lorry. In the said accident, the driver of the mini lorry and the cleaner received multiple injuries. Later on the driver died in the Government Hospital, Kurnool, while he was undergoing treatment. The claimants filed Exs. A.1 to A.5 in support of their case. In spite of the same, the Tribunal held that the claimants are entitled only for compensation under no fault liability as no eye witness to the accident was examined.

The relevant observations of the Tribunal are as follows:

“ Admittedly, PW.1 is not an eye witness to the occurrence. Ex.A.1 Complaint (FIR) appears to have been given by one Zafurulla Shareef. The petitioners have not examined the said Zafurulla or any of the eye witnesses to the occurrence. When the complaint is not given by PW.1 and she is not an eye witness to the occurrence, it can be said that there is corroboration for Ex.A.1, and that the petitioners failed to establish that the accident occurred, due to the negligence of the driver of lorry of R.1. Since the petitioners have not established the negligence on the part of the driver of the crime lorry of R.1, in causing the alleged accident, the petitioners are entitled for compensation under no fault liability, as the petitioners have failed to establish the negligence on the part of the driver of crime lorry. Therefore, the petitioners

are entitled for a minimum compensation of Rs.50,000/- as prescribed under the Act. Since the first petitioner lost the company of her husband (deceased), she is entitled for consortium of Rs.10,000/- and Rs.2,000/- towards funeral expenses of the deceased. In all, the petitioners are entitled for compensation of Rs.62,000/-.”

The Tribunal awarded an amount of Rs.62,000/- by its Order dt. 23.12.1999. The Award of the Tribunal also does not indicate who were responsible for paying the said amount. No copy of the insurance policy was filed by the claimants. The Tribunal should have taken into consideration the narration of events mentioned in Exs. A.1 and 5 and the evidence of PW.1 in order to see whether the lorry bearing No. TN A5 Z 4271 was involved in the accident or not and whether the claimants are entitled for compensation from the insurance company which might have insured the said lorry.

In view of the absence of these aspects, this Court is constrained to set aside the impugned award dt. 23.11.1999 and remand the matter to the Motor Claims Tribunal, Kurnool, for consideration of the matter afresh by giving due opportunity to the claimants to adduce necessary evidence. The entire exercise shall be completed on or before 30.09.2016.

The appeal is, accordingly, allowed. No order as to costs.

Miscellaneous Petitions, if any, pending in this case shall stand closed.

A.RAMALINGESWARA RAO, J

09.02.2016

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