

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1363 OF 2005

JUDGMENT:

The petitioner – claimant having got aggrieved by order and decree, dated 04.08.2004, in O.P.No.1010 of 1998 on the file of Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Khammam, whereby and whereunder, the Tribunal dismissed the claim laid under Section 166 of the Motor Vehicles Act, 1988, for award of Rs.1,50,000/- as compensation for the death of mother of the petitioner by name Arelli Pottemma, preferred the instant appeal on the main ground that respondent No.4 – Arelli Venkatesu, though not a son of the deceased, by playing fraud filed O.P.No.40 of 1998 on the file of Chairman, Motor Accidents Claims Tribunal – cum – Additional District Judge, Vijayawada, and obtained Award for Rs.65,000/- through the Lok Adalat against respondent Nos.2 and 3 and therefore, sought to set aside the order and decree under challenge.

2. The appellant is the petitioner, whereas respondent Nos.1 to 3, who are the driver, owner and insurer of the offending vehicle, respectively, are respondent Nos.1 to 3 and respondent No.4, who is claiming to be the son of deceased Arelli Pottemma, is respondent No.4 in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The fact situation occurring in the instant case is that on 04.08.1997 at about 06:00 AM, while one Arelli Pottemma along with Chitturi Tirupatamma and Thenanki Gangamma went towards Chatrai road for attending calls of nature, a lorry bearing registration No.AIC-4077 driven by respondent No.1 in a rash and negligent manner at high speed dashed the said Arelli Pottemma, due to which, she sustained grievous head injury and died instantly. The Station House Officer, Vissannapeta, registered a case in Crime No.60/97 under Section 304-A I.P.C. against respondent No.1. The petitioner, claiming that she is the only issue of deceased Arelli Pottemma, resident of Thatakulagudem, Vemsoor Mandal, Khammam District, since her father predeceased the deceased, and the deceased was aged 50 years earning Rs.40/- per day, laid claim for Rs.1,50,000/- against respondent Nos.1 to 3, who are the driver, owner and insurer of the offending vehicle, respectively, and also impleaded the said Arelli Venkatesu as respondent No.4, who was awarded Rs.65,000/- by way of compromise in Lok Adalat for the very same accident without adding her as a party to the proceedings therein.

5. Before the Tribunal, respondent Nos.1, 2 and 4 remained *ex parte* and respondent No.3 alone contested the claim disputing the petitioner's status as legal heir of the deceased and also claiming that the deceased was not living with the petitioner during her life time.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed the following three issues:

“1. Whether Arelli Pottemma died in a motor accident due to rash and negligent driving of the lorry bearing No.AIC-4077 by its driver/R.1?

2. Whether the petitioner is entitled to any compensation? If so, to what amount and from which of the respondents?

3. To what relief?”

7. During enquiry, the petitioner examined herself as PW.1 besides examining one Teneti Laxmaiah, an eye-witness to the occurrence, as PW.2 and marked Exs.A1 to A5. On behalf of respondent No.3, the Assistant Manager of the local Branch was examined as RW.1 and marked Exs.B1 and B2, which are the certified copy of Lok Adalat Award, dated 05.09.1998, passed in O.P.No.40 of 1998 on the file of Chairman Motor Accidents Claims Tribunal-cum-Additional District Judge, Vijayawada, and the office copy of voucher, dated 19.11.1998, showing deposit of cheque for Rs.65,000/- in O.P.No.40 of 1998.

8. The Tribunal, on appraisal of evidence, held issue No.1 in favour of the petitioner. On issue No.2, referring to the evidence of RW.1 and the contents of Exs.B1 and B2, held that once the claim was satisfied by the Insurance Company for the very same accident, there can be no second claim and the petitioner is not entitled to the amount claimed towards compensation, and in that view of the matter, dismissed the claim petition.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that in view of the fact that the petitioner had no knowledge about filing of O.P.No.40 of 1998 by respondent No.4, as she was not a party to the proceedings therein, the order of the Tribunal to seek appropriate relief in O.P.No.40 of 1998 is unsustainable. It is also contended that respondent No.4 obtained Award through Lok Adalat by playing fraud and misrepresentation and merely because the amount was paid under the Lok Adalat Award, respondent No.3 cannot escape liability so far as the petitioner's claim is concerned. It is also contended that respondent No.4 was not a legal heir of the deceased and therefore, sought to set aside the order and decree under challenge, and determine the compensation and grant the amount of Rs.1,50,000/- claimed by her.

10. Heard Sri K. Vinaya Kumar, learned counsel for the appellant and Smt. A. Malathi, learned counsel for respondent No.3. In the cause title, the appellant has endorsed that respondent Nos.1, 2 and 4 are not necessary parties, as they were set *ex parte* before the Tribunal.

11. There is absolutely nothing to probe into in view of the definite finding recorded by the Tribunal, which would not suffer from any perversity. The relevant finding recorded by the Tribunal on issue No.2 in the impugned order reads thus:

“Since the award is passed in O.P.No.40/98 on the file of M.A.C.T (Addl. District Judge), Vijayawada on account of death of Arelli Pottemma in a motor accident, who is also deceased in this O.P., the petitioner is not entitled for any relief in this O.P. and as such, the award passed in O.P.No.40/98 is subsisting, there cannot be second award for same cause of action. Therefore, this O.P. is liable to be dismissed. The issue No.2 is answered accordingly.”

12. The above extracted portion was the culmination of determination of factual aspect as to the filing of O.P.No.40 of 1998, which led to referring the matter to the Lok Adalat and awarding compensation, which was paid by the Insurance Company. When once the compensation was paid in the direction of indemnifying

the owner of the offending vehicle, for the very same accident, when another claim comes before the Tribunal, certainly, the Tribunal cannot direct to pay compensation once again by the Insurance Company and the owner. In that view of the matter, the finding recorded by the Tribunal, as extracted above, certainly, neither suffers from any illegality or infirmity nor can it be stamped as a perverse finding warranting interference by this Court. However, it is needless to mention that the petitioner is at liberty to avail the appropriate remedy available under law.

13. Hence, the instant appeal is dismissed. There shall be no order as to costs.

14. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

A. SHANKAR

NARAYANA, J

March 31, 2016.

MD