

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.4717 of 2008

JUDGMENT:

Respondent No.3-National Insurance Company Ltd., to the claim petition is the appellant. Notice sent to respondents 7 and 8 held as sufficient service, who are driver and owner of Toyota Qualis bearing No.AP 11J 6569 insured with the appellant herein. The appeal respondents 1 to 6 are no other than claimants. The claim was maintained for the death of one Anjaiah by the wife, children and mother of the deceased against three respondents including the appellant supra. The claim was under Section 163 of the Motor Vehicles Act, for Rs.5,00,000/- and the tribunal awarded compensation of Rs.3,33,650/- with interest at 7.5% p.a. vide award dated 25.06.2008 in O.P.No.455 of 2006. It is impugning the same, the present appeal is filed.

2. One of the contentions of the insurer/ appellant in the grounds of appeal vis-à-vis the contest before the tribunal is that the vehicle implicated falsely even not involved in the accident.

3. The factual matrix shows that the deceased having went for mastri work, while returning on his TVS Moped bearing No.AP 15A 3241 the accident was occurred near Gunturpalli Village near Karimnagar underneath the Railway Bridge at

about 8.45 p.m., within 40 minutes to the time of accident even the police station is in 3 K.M. the wife of the deceased given the report saying she received information from a nearby resident saying it is her husband who met with accident and on information she reached there and found her husband lost the breathe, thereby to take action. Crime No.127 of 2005 was registered there from by Station House Officer, Karimnagar Rural Police Station. It is during investigation revealed included from examination of eye witness no other than resident of opposite house to the place of resident PW.2. The police filed final report also from the factum of the accused voluntarily surrendered and produced the driving license and other particulars. The Criminal Case was ended in acquittal vide judgment in C.C.No.281 of 2006 on the ground of identification of the accused as driver at the time of driving the vehicle not established though the other facts established by raising benefit of doubt.

4. The contention of the learned counsel for the appellant/insurer mainly is that there is no worth evidence and PW.2 is a planted witness and the tribunal gravely erred in fixing as if the accident was the result of rash and negligent driving of the driver of the vehicle of the 1st respondent. In fact even the RW.1 employer of the insurer not an eye witness not even exhibited any M.V.I.Report stating that the said

vehicle was not involved in the crime. There is no cogent evidence to dispute the factum despite PW2 eye witness deposed there is nothing to discredit the testimony of PW.2 in fact since the factum of he is just opposite to the place of accident. No doubt, it is not always possible to notice the vehicle number that too in the night. But there is no such cross examination on that aspect, what he stated in the cross examination even was that he was there and witnessed the accident and also the vehicle number and after police reached there he and other eye witness left the place and on next day when police asked he stated the facts.

5. Having regard to the above, once the tribunal having come to the conclusion, merely because some other view also possible, for not a ground to interfere, that too when there is nothing to rebut said evidence. Thus, there is nothing to interfere for this Court while sitting in the appeal against said findings of the tribunal.

6. Accordingly and in the result, the appeal is dismissed. There is no order as to costs.

7. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B.SIVA SANKARA RAO, J

Date:12-09-2016
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