

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.4332 OF 2004

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved over the dismissal of the claim filed by the appellant herein for the death of her son, Balla Chandrarao, in a road accident that took place in the year 1996 and the said order, dated 23.08.2004, was passed in M.V.O.P. No.182 of 1999 by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge's Court, Srikakulam (for short, 'the Tribunal below').

2. Heard Sri Aravala Rama Rao, the learned counsel for the appellant, and perused the material available on record.

3. As far as the facts are concerned, there cannot be any dispute as to taking place of the accident within the limits of Karnataka State, but the petitioner, who is mother of the 1st deceased, could not secure any documents on account of the fact that she approached the Court with the claim petition belatedly, and the records, maintained by the Station House Officer, were destroyed according to the learned counsel for the appellant.

4. The appeal against respondent Nos. 2 and 4 was dismissed for default vide Court Order, dated 4.2.2011.

5. The Tribunal below, having framed three issues and examined P.W.1 and marked Ex.A1, and Ex.B1 on behalf of the Insurance Company, recorded a definite finding that the 1st respondent cannot be recorded as driver of the accident vehicle, which is a Tipper Lorry bearing Registration No.AP 31 T 9431, by the date of the alleged accident and thereby recorded a finding that the petitioner failed to establish that the alleged accident occurred due to rash and negligent driving of the said Tipper by the 1st respondent, resulting in the death of the deceased. The tribunal also recorded negligence on the part of the petitioner in not obtaining the certified copies of the First Information Report, Charge-sheet and Report of the Motor Vehicles Inspector, Inquest Panchanama in the crime concerned or at least papers in C.C. No.451 of 1996 on the file of Judicial Magistrate of First Class, Lingasugur. Yet another definite finding recorded by the Tribunal has been the policy marked as Ex.B1 does not show number of the vehicle and thereby hold that Ex.B1 policy cannot be connected with the alleged vehicle (Tipper) mentioned in the claim petition. That was the reason assigned in dismissing the claim against both the respondents.

6. The learned counsel for the appellant would fairly concede that no documents could be obtained for the reason that they were destroyed.

7. Almost three years have taken place for institution of M.V.O.P. No.182 of 1999 from the date of accident that occurred on

9.11.1996 and no material is put forth by the claimant such as certified copies of First Information Report, Charge-sheet in C.C. No.451 of 1996 on the file of Judicial Magistrate of First Class, Lingasugur of Karnataka State and Report of the Motor Vehicles Inspector, Inquest Panchanama in Crime No.80 of 1996 of Hutti Police Station, and thus, she cannot improve her case, now at the appellate stage. It is also not known how the claim was laid in the tribunal at Srikakulam, though the territory of Karnataka State is not the border area of Srikakulam District. Therefore, there is no legal infirmity in the order passed by the Tribunal below in dismissing the claim petition.

8. There are no merits in the present Appeal and, accordingly, the same is dismissed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 08.08.2017

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