

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

MACMA No. 801 of 2010

JUDGMENT:

This appeal is directed against the order, dated 25.02.2005 in MVOP No.198 of 2001 by the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (FTC), at Medak.

2. This is an appeal filed by the appellant-United India Insurance Company-2nd respondent in MVOP NO.198 of 2001.

3. The respondents 1 to 3-claimants filed the above O.P. under Section 166(1)(c) of the Motor Vehicles Act claiming compensation of Rs.2 lakhs on account of the death of one Shaik Abu Bakar in a motor vehicle accident occurred on 21.03.2000.

4. The brief facts of the claim petition are that on 21.03.2000 the deceased went to Hyderabad for purchasing fruits, after purchasing fruits, he engaged Van bearing No. AET-737 for transportation of fruits from Hyderabad to Medak. When the van reached near old bus station, Medak, the driver of the van stopped the vehicle for unloading fruit baskets. The deceased was unloading the fruits baskets, meanwhile the driver of the van in a negligent manner, started the van suddenly taking the van front side, due to which, the deceased fell down on the road and sustained grievous head injury. The deceased was shifted to private hospital in Medak town. As the condition of the deceased was serious, he was shifted to NIMS Hospital, Hyderabad and while undergoing treatment, the deceased died on 23.03.2000. The Police, Medak Town registered a case in Crime NO.62 of 2000 under Section 304-A of IPC.

5. The first respondent-owner of the van filed written statement before the Tribunal denying the negligence in driving the van and also denied his

liability. However, he admitted the factum of the accident. He admitted that the policy is subsisting and valid at the time of the accident. Hence, the second respondent is liable to pay compensation to the claimants and prayed for dismissal of the petition against him.

6. The 2nd respondent-insurer filed counter denying the occurrence of the accident due to the rash and negligent driving of the van by its driver and also the involvement of the deceased. It is contended that the deceased was unauthorized passenger in a goods vehicle and hence, the second respondent is not liable to pay any compensation to the claimants. The second respondent also denied that the person who drove the vehicle at the material time of accident was having valid subsisting driving licence to drive such vehicle and also the vehicle was roadworthy to ply. Hence, the second respondent prayed for dismissal of the claim petition with costs.

7. The Tribunal on consideration of the evidence on record has granted compensation of Rs.1,44,789/- with interest at 9% per annum.

8. The following points are framed for consideration in this appeal:

- Whether the accident occurred out of the use of the motor vehicle bearing No. AET-737 due to the rash and negligent driving of the driver of the vehicle?
- Whether the compensation awarded by the Tribunal is excessive?

9. This is a claim for death. The legal representatives of the deceased claimed compensation of Rs.2 lakhs and whereas, the Tribunal awarded compensation of Rs.1,44,789/- on consideration of the evidence. The appellant is the United India Insurance Company Limited.

10. Heard the arguments on behalf of the appellant-Insurance Company and also the learned counsel for the respondents.

11. The main contention of the learned counsel for the appellant is that the complaint was lodged on 21.03.2000. Whereas, the F.I.R. was issued on 23.3.2000. Ex.A.-2 is the first F.I.R. issued by the Police, Medak Town. The accident occurred due to use of the van bearing No. AET-737 and that it is planted in this case in order to get compensation.

12. It is appropriate to refer to the evidence of the witnesses in this case. On behalf of the claimants, PWs.1 to 3 were examined and marked Exs:A-1 to A-6. Ex.A-1 is the F.I.R. issued by Panjagutta Police Station. Ex.A-2 is the first F.I.R. issued by Police Station, Medak Town. Ex.A-3 is the post mortem report. Ex.A-4 is the charge sheet. Ex.A-5 is the cash receipts of medical bills numbering twelve. Ex.A-6 is the prescriptions numbering two. Ex.B-1 is the copy of the insurance policy. PW-1 is the wife of the deceased. She was not an eyewitness to the accident. But, she deposed about the occupation of the deceased and his income and the expenditure incurred for the treatment of the deceased. PW-2 is the direct witness to the accident. His evidence reveals that he was present very close to the scene of occurrence at the time of the accident. He saw the deceased unloading the fruit baskets from the van and at that time the driver of the van had suddenly moved the van, as a result of which the deceased fell down and sustained head injury. It is his testimony that the accident occurred due to the fault of the driver of the van. PW-2 was also examined by the police with regard to the accident after three months. PW-2 has also stated that the deceased was treated in Medak Hospital at the first instance and later he was shifted to NIMS Hospital, Hyderabad where he succumbed to the injuries. According to the testimony of PW-2, the accident occurred due to the negligence on the part of the driver of the van. Nothing is elicited in his cross-examination to disbelieve his version as he denied all the suggestions made by the counsel with regard to manner in which the accident

occurred. In fact, the driver was negligent in driving the vehicle while the deceased was unloading the fruit baskets from the vehicle. Therefore, the negligence on the part of the van driver is proved. The Tribunal was negligent in moving the van while the driver was unloading the fruit baskets. Therefore, the rash and negligent act on the part of the driver of the van is proved.

13, The contention of the appellant that the van was planted in this case and the witness PW-2 was also planted in this case cannot be accepted in the light of the documents Exs.A-1, A-2 and A-4. It is the contention of the appellant that there was delay in registering the complaint and the delay has not been explained. In fact, it is obvious that the first complaint was lodged in Police Station, Medak and on the point of jurisdiction, the case was transferred to Panjagutta Police Station, Hyderabad. Therefore, the delay in lodging the complaint is explained. The accident occurred on 21.03.2000. No doubt, in Ex.A-2 complaint lodged in Medak Police Station, the van number was not mentioned. But, Ex.A-4 certified copy of charge sheet clearly reveals that the van bearing No AET-737 is involved in the accident. Therefore, in the light of the contents of Ex.A-4 charge sheet, the crime vehicle van is involved in the accident. It is contended that the accused was arrested on 07.11.2000. Whereas, the accident occurred on 21.03.2000. As the accused must have absconding, he could not have been arrested. Therefore, there are no valid grounds to interfere with the findings of the Tribunal on the point Nos.1 and 2.

14. In view of the foregoing reasons, there are no merits in this appeal.

15. In the result, the appeal is dismissed. The order passed by the Tribunal in O.P.No.198 of 2001 is confirmed. There shall be no order as to

costs. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

G. SHYAM PRASAD, J

Date:30.03.2017.
ccm



HON'BLE SRI JUSTICE G. SHYAM PRASAD



M.A.C.M.A. No. 801 of 2010

Date:30.03.2017

ccm