

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 860 of 2010

JUDGMENT:

This appeal is arising out of the order dated 28.07.2008 in O.P.No.1745 of 2006 on the file of the II Additional Chief Judge, City Civil Court, at Hyderabad. The appellants herein are the petitioners-claimants before the Tribunal.

2. Brief facts of the case are that on 23.04.2006, the 1st petitioner, who was more than 65 years old, was traveling in an auto bearing No.AP-23V-3384. The auto hit a buffalo near Peddachintakunta village within Narsapur mandal, Medak District, due to the rash and negligent driving by the driver of the auto. The petitioner suffered injuries in the accident and he was taken to Government Hospital, Narsapur, and later shifted to Gandhi Hospital, Secunderabad, where he underwent treatment and his left leg above knee was amputated. Alleging that the accident occurred due rash and negligent driving by the driver of the auto, the claimants preferred the claim petition seeking compensation of Rs.5,00,000/- against respondents 1 and 2, the owner and insurer, respectively, of the crime vehicle.

3. The Tribunal, on consideration of the evidence available on record, assessed the compensation for injuries at Rs.1,40,000/-, but dismissed the claim petition on the ground that deceased died during the pendency of proceedings. The reason mentioned by the Tribunal is that, had the injured been alive, he would have become entitled to compensation for the injuries sustained by him.

4. Heard Sri T. Rajeshwar Rao, counsel for the appellants; and Sri K. Madhusudan Reddy, counsel for the 2nd respondent-Insurance company.

5. The points for consideration in this matter are:-

- (i) **Whether the appellants being the legal representatives of the deceased are entitled to claim compensation on account of the injuries sustained by the deceased?**
- (ii) **Whether the appellants are entitled to claim compensation on account of the death of the deceased, subsequent to injuries sustained by him in a motor vehicle accident?**
- (iii) **Whether there is any nexus between the injuries suffered by the deceased and his death?**
- (iv) **Whether the appellants are entitled for any compensation?**
- (v) **Whether the appellants are entitled for setting aside the orders passed by the Tribunal?**

6. Learned counsel for the appellants submits that originally the deceased filed O.P.No.1745 of 2006 on 09.08.2006. On 05.11.2006, 3 months after filing the O.P., the deceased died. The appellants being the legal heirs of the deceased were brought on record and they are continuing the proceedings in the O.P. before the trial Court.

7. Learned counsel for the appellants further submits that the appellants are entitled for compensation either for the injuries sustained by the deceased or for his death which occurred subsequent to the injuries.

8. Learned counsel for the 2nd respondent-Insurance company submits that since there is no evidence on record to show that the death of the deceased was due to the injuries suffered by him in the motor vehicle accident, his legal heirs are not entitled for any compensation on account of the death of the deceased.

9. Unfortunately, there is no evidence on record to show that the deceased died due to the injuries sustained by him in the accident. Therefore, there is no dispute about this aspect.

10. Learned counsel for the appellants concedes that the death did not occur due to the injuries sustained by the deceased in the accident, but however, he placed reliance on Ex.A7 medical certificate with regard to the medical treatment given by the Civil Assistant Surgeon.

11. Ex.A6 is the death certificate which shows that the deceased died about three months after the accident. Therefore, there is some force in the contention raised by the learned counsel for the respondent that the deceased did not die because of the injuries suffered by him in the accident.

12. Learned counsel for the 2nd respondent placed reliance on the decision rendered by the High Court of Karnataka in **Kannamma v. Deputy General Manager, K.S.R.T.C¹**, and submits that the appellants being legal heirs of the deceased are not entitled to claim compensation as the deceased is no more. He further submits that the Tribunal placed reliance on the said judgment and rightly dismissed the claim of the appellants.

¹ 1991 ACJ 707

13. Learned counsel for the 2nd respondent further submits that the Tribunal has also placed reliance on the judgment in **Kannamma (1 supra)** and observed in paragraph 7 of the impugned judgment, as under:

7. Now the question is whether the legal heirs of Durgaiah, are entitled to receive the compensation. The Full Bench of Karnataka High Court dealt with this issue in Kannamma v. Deputy General Manager, Karnataka State Road Transport Corporation (1991 ACJ 707. Their Lordships of the Karnataka High Court held that “The common law rule action personalis moritur cum persona as embodied in Section 306 of the Indian Succession Act since applied to India, a claim by a person for compensation for personal injuries caused in a motor accident does not, on that person’s death not being the consequence of such injuries, survive to his/her legal representatives. In the case on hand, there is no medical evidence that death of Durgaiah, which is occurred few months after the accident, is on account of amputation of the leg as he has already old, the death is presumed to be natural and not on account of injuries sustained in the road accident, in view of the law laid by the Full Bench of Karnataka High Court and as no decision of either A.P. High Court or of the Supreme Court, is brought to my notice by either of counsel and inspite of my own search, the petitioners Nos.2 and 3, who are legal representatives of deceased-petitioner Durgaiah, are not entitled to compensation. Issue No.2 is answered against the claimants and in favour of respondents.”

14. The Tribunal has given a categorical finding with regard to the nexus between the injuries and the death of the deceased. This is a most unfortunate case where the injured could not get any compensation out of the injuries sustained by him during his life time. During pendency of the petition, he died. Subsequently, his legal representatives were brought on record. However, no effort appears to have been made by the legal representatives by examining the medical officer to prove whether there was any nexus between

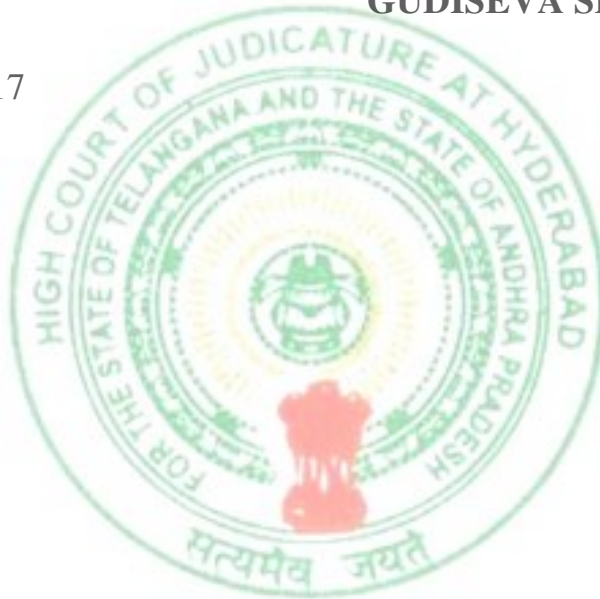
the injuries and death of the deceased. The Tribunal came to the conclusion that the death was not due to the injuries sustained by him in the accident.

15. In view of the foregoing reasons, there is no merit in this appeal and the appeal is liable to be dismissed.

16. Accordingly, the appeal is dismissed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

08th February, 2017
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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**MACMA No. 860 of 2010****08th February, 2017****ksm**