

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 1304 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellants, who are the petitioners in M.A.T.O.P. No.482 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional Chief Judge (Fast Track Court), Khammam (for short, 'the Tribunal'), aggrieved by the dismissal order dated 27.10.2005 passed in the said O.P., which was filed claiming compensation of Rs.2,50,000/- from respondent Nos.1 and 2 for the death of one Ramiseti Venkanna in a motor vehicle accident occurred on 29.12.1999.

2. The facts would show that the said Ramiseti Venkanna (deceased), who was husband of appellant No.1 and father of appellant Nos.2 to 4, on 29.12.1999, while driving a lorry bearing registration No.AP 20T 3959 from Tanker to Tiruvuru and, on the way near Pulla village, he lost control over the vehicle and dashed against a stationed lorry bearing registration No.AP 36T 4477, as a result of which, he and other passengers travelling in the lorry received injuries. A report was lodged with the police and a case was registered in Crime No.119 of 1999 by Bhimadole Police for the offences punishable under Sections 338 and 279 IPC. On 30.12.1999 at 5-00 p.m., the deceased went to his house with serious injuries and thereafter, he was said to be admitted in the

hospital of Dr. Venkat Reddy of Gollapudi village and on 31.12.1999 at 4-00 p.m., he succumbed to the injuries.

3. After examining the entire evidence on record, the Tribunal dismissed the petition holding that the appellants-petitioners failed to prove that the deceased sustained injuries in this motor accident and succumbed to those injuries.

4. Heard both the learned counsel for the appellants-petitioners and the learned Standing Counsel for respondent No.2-insurer, apart from perusing the material available on record. The appeal against respondent No.1-owner is dismissed on 28.06.2016 for default. However, dismissal of the appeal for default against respondent No.1-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹, wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance

¹ 2001(1) ALT 495 (D.B.)

Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

5. Learned counsel for the appellants contended the Tribunal had disbelieved that the deceased suffered injuries in the motor accident and died due to those injuries and dismissed the petition without any justification, though there is ample evidence on record to believe the death of the deceased due to the injuries sustained in a motor accident.

6. On the other hand, learned Standing Counsel for respondent No.2-insurer contended that the deceased did not suffer any injuries in the motor accident and the appellants have failed to prove the injuries and the death in the motor accident. He further contends that the Tribunal has rightly dismissed the petition and there are no grounds to interfere with the order under challenge.

7. In view of the contentions put forth by both sides, the points that arise for consideration are:

- 1) Whether the deceased-Ramisetti Venkanna died due to the injuries suffered in the motor accident?
- 2) Whether the appellants-petitioners are entitled for compensation?

8. Point No.1: The evidence of P.W.1-wife of the deceased reveals that her husband was working as driver of lorry bearing registration No.AP 20T 3959 and on the date of accident, when he reached near Pulla village, he lost control over the vehicle and in spite of his best efforts dashed a stationed lorry bearing registration No.AP 36T 4477, which is said to have been stopped on road margin, and, consequently, her husband suffered fractures and grievous injuries, immediately after the accident, he reached Gollapudi, i.e., their village, with injuries and was admitted in the hospital of Dr. Venkat Reddy, and while undergoing treatment, he succumbed to the injuries on 31.12.1999. In the cross-examination, she reiterated the same. In support of her evidence, she got marked Ex.A.1 is the certified copy of F.I.R. in Crime No.119 of 1999 of Bheemadolu Police Station, Ex.A.2 is the attested copy of F.I.R. in Crime No.95 of 1999 of Wyra Police Station, Ex.A.3 is the Motor Vehicles Inspector's report, Ex.A.4 is the Post-mortem Examination report, Ex.A.5 is the photostat copy of the driving licence of the deceased and Ex.A.6 is the inquest report in connection with Crime No.95 of 1999 of Wyra Police Station. As per Ex.A.1, there is no mention of the deceased suffering injuries. In Ex.A.6-inquest report, it is mentioned that the deceased told his wife that he suffered injuries in a motor accident, but there are no specific injuries mentioned as contended by P.W.1 that her husband suffered multiple fractures and other injuries. In Ex.A.4-

postmortem examination report also, there is no mention of injuries, but it is mentioned therein that there is yellow flue was present in his stomach. In both the documents, there is no mention of the deceased succumbing to the injuries. Though P.W.1 stated that the deceased was having injuries on his left hand, right hand and chest, but no injuries are found by the doctors who conducted autopsy. Though P.W.1 stated in her report dated 30.12.1999 that the deceased came to their house with extensive injuries and when she enquired the deceased, she came to know that he sustained injuries in an accident at Bheemadolu village and thereafter, she along with her brother-P.Narasimha Rao took the deceased to Dr. Venkat Reddy of Gollapudi village and there while undergoing treatment, he died at 4-00 a.m. on 30.12.1999, neither the said doctor nor her brother were examined to prove that the deceased suffered injuries in a motor accident. In the circumstances of the case, there is no iota of evidence, either oral or documentary, to believe that the deceased suffered injuries in a road accident occurred on 29.12.1999, while driving the lorry and succumbed to those injuries. The Tribunal also examined the evidence of P.W.1 and all the relevant documents, such as, Exs.A.1 to A.6, and recorded finding that the deceased did not suffer any injuries in the road accident and did not succumb to those injuries, by assigning reasons. Under these circumstances, no other opinion can be substituted and it can be safely concluded that the appellants failed to prove that the deceased died due to the injuries

sustained in the motor accident while driving the subject lorry. Accordingly, this point is answered.

9. Point No.2: Learned counsel for the appellants-petitioners has relied on the decision of the Hon'ble Supreme Court in **Rita Devi and others v. New India Assurance Company Limited and another**², wherein it is held in paragraph No.9 as follows:

"A conjoint reading of the above two sub-sections of Section 163-A shows that a victim or his heirs are entitled to claim from the owner/insurance company a compensation for death or permanent disablement suffered due to accident arising out of the use of the motor vehicle (emphasis supplied), without having to prove wrongful act or neglect or default of anyone. Thus it is clear, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of motor vehicle then they will be entitled for payment of compensation. In the present case, the contention of the Insurance Company which was accepted by the High Court is that the death of the deceased (Dasarath Singh) was not caused by an accident arising out of the use of motor vehicle. Therefore, we will have to examine the actual legal import of the words "death due to accident arising out of the use of motor vehicle"."

10. The above decision relates to an accidental death arising out of the use of the motor vehicle. The facts and circumstances of the said case are different. Since there is no evidence that the deceased succumbed to the injuries in the motor accident, the

² (2000) 5 SCC 113

petitioners are not entitled to any compensation. Therefore, there is nothing to interfere with the order under appeal.

11. Accordingly, the appeal is dismissed confirming the order dated 27.10.2005 passed by the Tribunal. There shall be no order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

Date: 24.01.2017

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Dr. SHAMEEM AKTHER, J.



