

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 301 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 06.09.2005, in O.P. No.1123 of 2003, on the file the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-District Judge, Nizamabad (for short, 'the Tribunal').

2. Appellants herein are the petitioners, 1st respondent herein is the owner and 2nd respondent herein is the insurer of Maruthi Van bearing No.AP 9/S 1854. The appellants filed a petition before the Tribunal, under Section 166 of the Motor Vehicles accident, 1988 (for short, 'the Act,') claiming compensation of Rs.5,00,000/- on account of death of their son, Shaik Abdul Riyaz (Hereinafter referred to as 'the deceased'), in a motor vehicle accident occurred on 27.05.2003.

3. The brief facts of the petition are that, on 27.05.2003, at about 09:00 a.m., when the deceased was standing on the roadside bus stop at Thimmapur leading from Bhainsa to Nirmal, the crime vehicle driven by its driver at high speed, in a rash and negligent manner, came from Nirmal side and dashed the deceased with its front portion, due to which the deceased fell down, front wheels of the crime vehicle ran over the deceased, as a result of which the deceased fell down, received multiple fractures and injuries all over his body. Immediately, he was shifted to Government Headquarters Hospital, Nizamabad, where he succumbed to the injuries while undergoing treatment on the same day. Subsequently, the S.H.O.

Bhainsa Police Station registered a case in Crime No.42 of 2003, for the offence under Section 304-A I.P.C. The deceased was working as fruit and vegetable vendor and earning Rs.6,000/- p.m. and used to contribute the same to the appellants. Hence, the appellants filed the Original Petition seeking compensation of Rs.5,00,000/-.

4. Respondent No.1, owner of the crime vehicle, remained *ex parte* before the Tribunal.

5. Respondent No.2 filed counter denying the claim of the appellants holding that there is no mention of the registration number of the Maruthi Van in the complaint; as per the police records, an unknown Maruthi Van dashed the deceased. Subsequently, the appellants have colluded with the 1st respondent and got planted the crime vehicle in this case, therefore, sought for dismissal of the Petition.

6. The Tribunal, on consideration of the pleadings and evidence of the witnesses P.Ws.1 and 2 and the documents Exs.A-1 to A-4, decided all the issues against the appellants and dismissed their claim, disbelieving their version about the manner and occurrence of the accident, as per the contents of the charge sheet. The observation of the Tribunal is that the crime vehicle was planted leisurely, after a period of 19 days of the accident, for the purpose of this case.

7. On consideration of the orders of the Tribunal, it is obvious that the Tribunal, in Para 13 of its order, observed that, 19 days after the accident, the accused claiming to be the driver of the crime

vehicle, belonging to the first respondent, had surrendered before the Police, admitting his guilt.

8. In fact, the appellants filed claim petition for the death of the deceased. The number of offending vehicle does not find place in the F.I.R. The Police after investigation, might have traced the offending vehicle, Maruthi Van, and filed charge sheet. The Tribunal only on the ground of 19 days delay in filing the F.I.R. disbelieved the very accident, and held that the Maruthi Van was planted.

9. The learned counsel placed reliance on a decision rendered by this Court in *Bodige Padma and others Vs. Makula Shanker and others*¹, stating that the facts of that case are similar to the fact of the present case, as cited. As a matter of fact, F.I.R. is not an encyclopaedia. In a case of accident, the vehicle may escape and might be traced after some time. The very accident cannot be doubted due to delay in lodging the F.I.R. The decision cited *supra* is applicable to the facts of this case. The delay of 19 days is not fatal to this case. There is no concrete evidence to show that the offending vehicle is planted in this case. In fact, the driver of crime vehicle has surrendered after 19 days of the accident. Therefore, there is no evidence to disbelieve surrendering of the driver and admitting his guilt.

10. In view of the foregoing reasons, the impugned order of the Tribunal is not sustainable. It is liable to be set-aside.

¹ 2012 (5) ALT559

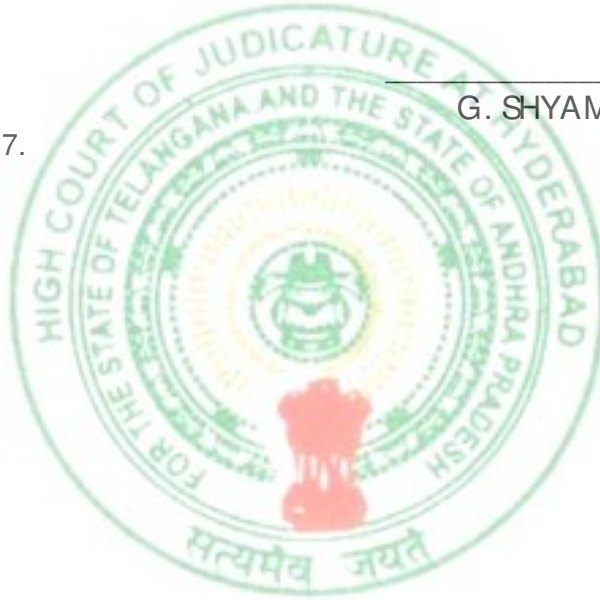
11. In the result, the order of the Tribunal in O.P. No.1123 of 2003 is set-aside. The matter is remanded back to the Tribunal, for fresh disposal according to Law, uninfluenced by any of the findings made in this Appeal.

12. Accordingly, with the above observation, the Appeal is disposed of.

13. As a sequel, pending miscellaneous petitions, if any, shall stand disposed of as infructuous. No order as to costs.

Date:14.02.2017.
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G. SHYAM PRASAD, J



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