

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.284 of 2006

ORDER:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is arising out of the judgment and decree, dated 31.10.2005, in M.V.O.P.No.707 of 2000 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, East Godavari, Rajahmundry (for short, 'the Tribunal').

2. This is an appeal filed by the appellants, the petitioners in O.P.No.707 of 2000. The said Original Petition was filed under Section 166 of the Act claiming compensation of Rs.2,00,000/- on account of death of the deceased Kommana Venkata Sreenivasa Rao @ Sreenu occurred in the motor vehicle accident that took place on 22/23.12.1999.

3. The parties are hereinafter referred to as they are arrayed in the Original Petition.

4. The brief facts of the case are that the deceased was a qualified mechanic and he is attending the repair work of proclainer vehicle. Recognizing the skill of the deceased, the 1st respondent employed him to attend the repair works of his proclainer on a monthly salary of Rs.3,000/-. On 18.12.1999 at about 6:00 PM when the deceased was in the house, the 1st respondent took him to Jagitial for effecting repairs to the proclainer vehicle. The deceased being employee of R.1, while driving the scooter of R.1 in the course of his employment, met with an accident on 22/23.12.1999 and subsequently, died due to the injuries sustained by him. The petitioners, who are parents of the deceased, claimed compensation of Rs.2,00,000/-.

5. Respondent No.1 filed counter, denying the averments made in the petition, contending that in the month of October, 1999 when the JCB was working in Jagitial Mandal, Karimnagar District, under the road contractor, some mechanical defects arose, then the 1st respondent telephoned to the deceased to go over there to effect repairs. Accordingly, the deceased went to Jagitial and made repairs for about three years. R.1 paid charges for attending to the work done by the deceased and thereafter, he was supposed to return to Dowleswaram. Instead of coming back after completing the work, the deceased stayed there and took one Bakkisetty Reddy and Chinta Bhaskara Reddy on the scooter of the 1st respondent, without obtaining any permission from the lessee, and went to Dharmapuri and there consumed alcohol, and while returning, met with an accident while the deceased was driving the scooter. The accident has occurred due to his rash and negligent driving. It is further stated that the accident did not occur during the course of his employment but only on humanitarian grounds, the 1st respondent helped in providing the medical aid to the deceased. Therefore, the 1st respondent is not liable to pay any compensation to the petitioners and prayed for dismissal of the petition.

6. The second respondent filed written statement admitting that the scooter bearing No.AP-5-E-9419 was insured with the 2nd respondent; that the deceased was working as an employee under the 1st respondent and earning Rs.3,000/- per month. It is further averred that the deceased took the scooter of the 1st respondent without his permission and met with an accident due to his own rash and negligent driving and that as the deceased was employee of 1st respondent, the 2nd respondent is not liable to pay any compensation

as the policy does not cover the risk for the rider of motorcycle driver. It is further averred that the compensation claimed is excessive, and therefore, sought for dismissal of the petition.

7. The Tribunal examined two witnesses P.Ws.1 and 2 and marked Exs.A.1 to A.3 on behalf of the petitioners, and examined R.Ws.1 to 5 and marked documents Exs.B.1 and B.7 on behalf of the respondents.

8. On consideration of the evidence, the Tribunal held that the deceased met with an accident due to his own negligence, and the death did not occur in the course of his employment and dismissed the O.P. Aggrieved by the judgment and decree, this appeal has been preferred by the appellants.

9. Heard the arguments of Sri Ch.Dhanamjaya, learned counsel for the appellants, Sri T.V.Jaggi Reddy, learned counsel for respondent No.1. None appears for respondent No.2 in spite of service of notice.

10. Learned counsel for the appellants would submit that the deceased was aged about 21 years at the time of accident and he was a qualified mechanic and he was engaged by the 1st respondent to attend the repairs of his proclainer (vehicle) on a monthly salary of Rs.3,000/-. On 18.12.1999 at about 6:00 PM when the deceased was in his house, the 1st respondent took him to Jagityal for effecting repairs to his proclainer, and the deceased while driving the scooter of R.1 in the course of his employment, met with an accident on 23.12.1999 and later he succumbed to injuries.

11. Learned counsel for the 1st respondent, owner of the vehicle, submits that the deceased did not meet with an accident in the course of employment; that the deceased went to Dharmapuri on the scooter of R.1 and he met with an accident and therefore, the R.1, owner is not liable to pay any compensation to the deceased.

12. It is appropriate to refer to findings of the Tribunal at para 23 in this regard, which are extracted below:

“on perusal of the final report, in Ex.B.5 it is transpired that the deceased went to Dharmapuri, consumed liquor along with two others and while returning back, he met with an accident. The petitioners could not explain why the deceased went to Dharmapuri on the scooter of R-1. If the deceased, was asked to go to Dharmapuri in connection with the repair work, then it would certainly relating to his employment. If the deceased went to Dharmapuri only for the purpose of consuming liquor or for any other purpose, it has nothing to do with the employment is concern. So, the petitioners failed to establish that the deceased went to Dharmapuri on the scooter of R-1 in connection with his employment. In view of the contention of R.W.1 and in view of final report, it is clear that the deceased went to DHarmapuri for his own purpose and while returning back, he met with the accident, so he was not in the employment of R.1 when he met with the accident and the accident is also not out of employment. So this Court held that the accident did not took place in the course of and out of employment of the deceased under R-1.”

13. On consideration of the evidence on record and the observations of the Tribunal referred to above, this Court is of the considered view that the deceased did not go to Dharmapuri in course of his employment and therefore, the appellants are not entitled to claim compensation on account of death of the deceased.

14. The accident occurred out of the own negligence of the deceased while driving the scooter in a drunken condition. After

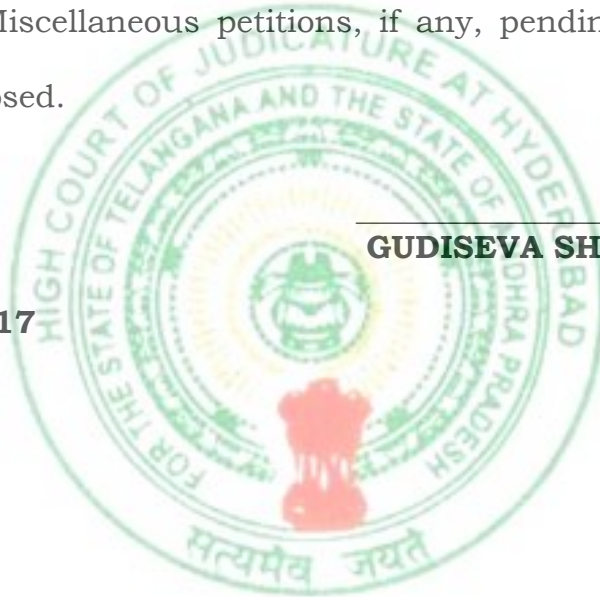
appreciating the facts, the Tribunal came to the right conclusion that the accident did not occur out of the negligence of any other person than himself. In case of self negligence, the owner or insurer is not liable. The accident did not occur in the course of his employment. Therefore, the findings of the Tribunal do not require any interference.

15. In view of the foregoing discussion, I find that there are no valid grounds for consideration in this appeal.

16. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

GUDISEVA SHYAM PRASAD, J

APRIL 04, 2017
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HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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Date:04.04.2017

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