

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A.No.4700 OF 2004

JUDGMENT:

Aggrieved by the dismissal of the claim petition in O.P.No.1199 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal–cum–III Additional Chief Judge, City Civil Court, Hyderabad, by order, dated 23.09.2002, the present appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is preferred by the petitioners in the said O.P., who are the wife and daughter of the deceased, A. Rajaram.

2. By the order under challenge, the Tribunal, on appraisal of evidence of PWs.1 and 2 and the contents in Exs.A1 to A5, formed an opinion that the said A. Rajaram, on account of his own rash and negligent driving, caused the accident, due to which his death occurred and thereby, recorded a plausible finding that no liability can be fastened against the insurance company. That has been the purport of the order under challenge.

3. Heard Sri Chintala Ramesh, learned counsel for the appellants, and Sri Muddu Vijay, learned Standing Counsel for respondent No.2 – New India Assurance Company Limited.

4. No representation for respondent No.1.

5. Admittedly, respondent No.1 is the owner of the offending vehicle and respondent No.2 is its insurer. While analysing the

evidence of PW.2, which runs contrary to the contents in Exs.A1 to A3, wherein the deceased was shown as accused, the Tribunal assigned the reason, which is contained in paragraph No.7 of the order under challenge, and answered issue No.1 against the appellants.

6. Paragraph No.7 of the order under challenge reads thus:

“Issue no.1: As far as the aspect of the rash and negligent driving of the offending vehicle by its driver resulting the accident in question is concerned, the evidence of the 1st petitioner as PW.1 will not clinch the same for the simple reason that she was not present when such accident took place. The petitioners have also marked the certified copies of FIR registered by the police personnel in crime No.286/97 relating to the accident in question, final report therein and the inquest report as Exs.A1 to A3 respectively before the court. But, the above documents marked under Ex.A1 to A3 also are not in support of the case of the petitioners. A careful perusal of Ex.A1 certified copy of the FIR shows that it is the driver of the offending vehicle who gave report to the police personnel attributing rash and negligent driving against the deceased resulting the accident in question. Similarly Ex.A2 certified copy of final report shows that the Investigating Officer after conducting investigation in pursuance of the registration of the crime under the original of Ex.A1 ultimately filed such report before the concerned court as “ACTION ABATED” on account of the death of the deceased against whom such report was given. It is not at all the investigation of the investigating officer that the accident in question took place due to rash and negligent driving of the offending vehicle by its driver and that to save his skin such driver gave report to police personnel against the deceased. Apart from the above circumstances, even in Ex.A3 certified copy of inquest report also rash and

negligent driving was attributed against the deceased only resulting the accident in question. So, the petitioners documents of Exs.A1 to A3 marked on their behalf will not prove their case with regard to the rash and negligent driving of the offending vehicle by its driver. Though, the petitioners have examined one Jayasimha as PW.2 to the effect that he witnessed the accident in question, a careful perusal of his evidence shows that the same is quite artificial only particularly in view of the fact that the accident in question took place during the odd hour of 4.30 a.m. In addition, the petitioners have not referred the name of PW.2 as one of the eye-witnesses to the accident in question in the petition filed at the earliest opportunity. Further, PW.2 has specifically admitted in his cross-examination that he was not examined by the police personnel, the aspect of which also will have some impact upon the mind of the court while coming to a conclusion. So, when the court takes into consideration of the above circumstances coupled with the recitals made in Exs.A1 to A3 which are the own documents of the petitioners, it cannot give any weight to the evidence of PW.2 while deciding the controversy. Hence, under the above circumstances, it must be held that the petitioners have failed to prove that the accident in question took place due to rash and negligent driving of the offending vehicle by its driver. Accordingly, this issue is answered.”

7. Thus, when there is negligence on the part of the deceased himself, it is difficult to withhold the dismissal order passed by the Tribunal. In fact, an attempt is made by the appellants to convert the claim from Section 166 of the Act to that of Section 163A of the Act, but the petition made therefor in C.M.A.MP.No.555 of 2006 is also dismissed on merits today, vide separate docket order. Therefore,

there is no other option, except to confirm the order passed by the Tribunal, dismissing the present appeal.

8. Accordingly, the present appeal is dismissed confirming the order, dated 23.09.2002, passed in O.P.No.1199 of 2000 by the Chairman, Motor Accidents Claims Tribunal–cum–III Additional Chief Judge, City Civil Court, Hyderabad.

9. Miscellaneous Petitions, if any, pending in this appeal shall also stand dismissed. There shall be no order as to costs.

October 11, 2017.
MD

A. SHANKAR NARAYANA, J

