

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A No. 759 of 2010

JUDGMENT:

This appeal is arising out of the order dated 05.11.2009 in O.P.No.443 of 2007 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal (Principal District Judge), at Nalgonda, (for short, 'the Tribunal').

2. The appellants, who are the legal representatives of the deceased Barigela Mallamma, filed OP No.443 of 2007 before the Tribunal seeking compensation of Rs.2,25,000/- on account of the death of the deceased in a motor vehicle accident, that took place on 21.08.2006. Brief facts of the case are that on 21.08.2006, at about 11:30 hrs, while the deceased was going by walk near Kanakadurga Temple, Nakrekal, a motorcycle bearing No.AP-28-AR-1339 hit the deceased from behind, due to which the deceased sustained grievous injuries and succumbed to the injuries while undergoing treatment. Alleging that the accident occurred only due to the rash and negligent riding of the motorcycle, the appellants filed the above mentioned claim petition against respondents 1 and 2 who are the owner and insurer, respectively, of the motorcycle.

The claim petition was dismissed against respondent No.1-owner, for non-deposit of process. Respondent No.2-insurer filed its counter denying the averments in the claim petition.

Based on the pleadings, the Tribunal framed the following three issues:

- (i) Whether the deceased Barigela Mallamma died in the road accident?**
- (ii) Whether the petitioners are entitled to claim compensation? If so, to what amount and from whom?**
- (iii) To what relief?**

On behalf of the claimants, PW1 was examined and Exs.A1 to A5 were marked. On behalf of the respondent-Insurance company, Ex.B1 was marked.

The Tribunal, on consideration of the oral and documentary evidence available on record, dismissed the petition by the impugned order. Aggrieved by the same, the claimants filed the present appeal.

3. Heard learned counsel for the appellants. None appeared for the respondents though notices were served.

4. Learned counsel for the appellants contended that due to non-deposit of process by the appellants for summoning the respondent No.1, the claim against respondent No.1 was dismissed by the Tribunal. The learned counsel submits that the appellants were not aware of the fact that claim against respondent No.1 was dismissed otherwise they would have filed a petition for setting aside the exparte order. The appellants came to know only after the judgment was pronounced that their claim was dismissed.

5. The Motor Vehicles Act is a beneficial legislation. The interest of the appellants should not be defeated. No doubt, there is some negligence on the part of the appellants in prosecuting the case, however, the Tribunal ought to have afforded an opportunity to them to deposit the process. Since the appellants came to know only after the dismissal of O.P., they approached this Court. The appellants due to socio-economic problems and may be due to lack of proper advice, lack of legal awareness, could not have prosecuted the case. They would not have intentionally not paid the process fee. When the appellants have claimed huge compensation, they would not let it get dismissed by not intentionally paying the process fee, which is a very meager amount.

6. In view of the fact that the Tribunal dismissed the claim petition for mere non-deposit of process, the impugned order is liable to be set aside.

7. Accordingly, the order dated 05.11.2009 in O.P.No.443 of 2007 is set aside, and the matter is remanded back to the Tribunal for fresh disposal, according to law, after affording opportunity to both the parties. No costs. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE G.SHYAM PRASAD

07th February, 2017
KSM



