

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.2611 OF 2004

JUDGMENT:

This appeal is preferred by the legal representatives of the deceased Appellant No.1, i.e., Appellants 2 to 5, being aggrieved by the dismissal of the claim vide Award, dated 25.11.2003, passed in O.P. No.1145 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, R.R. District at L.B. Nagar, Hyderabad (for short, 'the Tribunal').

2. Heard Sri, P. Venkat Reddy, the learned counsel for the appellants 2 to 5, and Sri Kota Subba Rao, the learned counsel for the respondent No.2, and perused the material available on record.

3. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

4. The facts in issue are as under:

The claimant No.1/appellant No.1 filed an application under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.1,00,000/- (Rupees One lakh only) as he sustained fracture to his right knee in a motor accident that took place on 5.8.1999. On the said day at about 9.45 a.m., while the claimant No.1 was proceeding on a Scooter bearing No.AP-28-L-5916 and when he reached Sushma X roads, a Matador Van bearing No.AP-16-T-524 being driven by its driver in a rash and negligent manner at high speed

dashed against the Scooter. Consequently, the deceased fell down and sustained injuries. Immediately, he was shifted to Osmania General Hospital for treatment, and later he was shifted to Apollo Hospital for better treatment. The deceased was designated as Deputy Collector and worked as Assistant Secretary, Evacue property in the office of Chief Commissioner of Land Administration, Nampally, Hyderabad. Due to the fracture of the right knee, the deceased did not attend to his duties from 5.8.1999 to 25.9.1999 as he underwent severe pain, shock and mental agony. It is stated that the deceased was hale and healthy and earning Rs.11,093/- per month. In respect of the above incident, a case in Crime No.263 of 1999 of Vanasthalipuram P.S. was registered under Section 337 of I.P.C. Since the 1st respondent is the owner of the Matador Van, and as the said vehicle was insured with the 2nd respondent, the claimant No.1/appellant No.1 filed O.P. No.1145 of 1999 claiming compensation of Rs.1,00,000/- (Rupees One lakh only). But, the claimant (petitioner No.1) suffered natural death in the month of November, 2000 and, therefore, the petitioners 2 to 5, being legal representatives, came on record as per orders in I.A. No.2100 of 2003, dated 17.7.2003.

5. The 1st respondent, owner of the vehicle, remained *ex parte* before the Tribunal below. The 2nd respondent – Insurance Company - filed a counter denying the material averments in the petition and also the manner in which the accident took place, injuries received and the expenditure incurred for treatment.

6. Basing on the above pleadings, the Tribunal below framed the following issues:

- (1) Whether the petitioner is entitled for any compensation, and interest as claimed in this O.P.?
- (2) Whether the R1 and R2 are liable to pay any part of the monies covered by Issue No.1, supra?
- (3) To what relief?

7. In support of the claim, the wife of deceased, Smt. K. Aruna Devi, was examined as P.W.1 and also examined one of the sons of the deceased, Sri K. Vinay Kumar, as P.W.2, apart from marking Exs.A1 to A9. On behalf of the respondents, no oral evidence is adduced, except marking Ex.B1 – Copy of Insurance Policy.

8. After considering the oral and documentary evidence available on record, the Tribunal below came to the conclusion on the mere ground of discrepancy with regard to mentioning the registration number of the vehicle as 'AP-16-T-529' by P.W.2 in his chief-examination and also in his cross-examination, though vehicle number was shown as 'AP-16-T-524' in the First Information Report and other documents maintained by the Investigating Officer, and also at one place finding from the charge-sheet that it was mentioned as 'lorry' rather than 'Matador van', disbelieved the evidence of the petitioner (claimant No.1) and dismissed the claim in its entirety. Aggrieved over the same, the present Civil Miscellaneous Appeal is preferred.

9. Be that as it may, the documentary evidence would clearly show that wherever 'Matador Van' was referred to, it was referred to AP-16-T-524, but not AP-16-T-529. The panchanama marked as Ex.A3 also would show that the said Registration Number relates to Matador Van. Thus, in Ex.A1, which is the First Information Report and Ex.A3, Certified copy of scene of offence panchanama, and in the Claim Petition the number of the Matador Van was mentioned as 'AP-16-T-524' and only in the charge-sheet the description is given as 'lorry' but number is correctly mentioned, and P.W.2 incidentally mentioned registration number as 'AP-16-T-529' instead of 'AP-16-T-524'. In fact, initial onus, on discharge, shifts to the contesting respondent, in which direction the contesting respondent completely failed to establish that the Matador Van bearing Registration No.AP-16-T-524 was not involved and instead lorry was involved. In such an event, award passed by the Tribunal below is liable to be set aside, and, accordingly, set aside.

10. Now, the question that falls for consideration is, whether the appellants 2 to 5 are entitled to compensation, if so, to what extent?

11. Since death of the injured took place during pendency of the proceedings, the answer is, certainly, 'Yes'. So far as pain and suffering and personal injuries are concerned, the appellants 2 to 5 herein, who are legal representatives of the deceased appellant No.1, are not entitled to, but for other components they are entitled to. The

learned counsel would submit that Ex.A9, Medical Bills (6 Nos.), would show that an amount of Rs.41,656/- was incurred towards medical treatment. The learned counsel for the 1st respondent – Insurance Company would submit that the deceased, being public servant, he would have got reimbursed the said amount. When there is nothing on record, to show that the said amount was reimbursed, certainly, the appellants 2 to 5 cannot be deprived of the said amount. So far as the other components are concerned, i.e., towards Transportation Charges and Attendant Charges, as the appellant No.1 sustained knee fracture, certainly, the appellants 2 to 5 herein, being the legal representatives, are entitled to some amount. Hence, a sum of Rs.10,000/- (Rupees Ten thousand only) is awarded towards transportation charges and a sum of Rs.15,000/- (Rupees Fifteen thousand only) is awarded towards attendant charges.

12. Accordingly, the appeal is partly allowed and the appellants 2 to 5 are awarded a sum of Rs.66,656/- (Rupees Sixty six thousand six hundred and fifty six only). The said amount will carry interest at 7.5% per annum from the date of petition till the date of realization. The amount can be paid to the claimants 2 to 5/appellants 2 to 5 in accordance with law. There shall be no order as to costs.

So far as the compensation is concerned, keeping in view that the claim petition relates to the year 1999 and that no purpose would be served in remitting the matter to the Tribunal below for ascertainment or determination of compensation.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 01.08.2017
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