

THE HON'BLE SRI JUSTICE M. S. K. JAISWAL

MACMA No. 1299 of 2010

JUDGMENT:

This appeal is preferred by the claimant being aggrieved by the dismissal of MVOP.No.366 of 2007 by Motor Accidents Claims Tribunal (I Additional District Judge) at Khammam, dated 10.03.2010 by and under which the claim made by the appellant/claimant for the death of her husband in an accident said to have taken place on 20.01.2003, was dismissed.

2. The brief facts of the case are that on 20.01.2003 while the deceased – Darla Suman, husband of the appellant/claimant, and one Chinnam Ramakrishna were returning to their village Madhira from Khammam on motor cycle bearing No.AP20-G-6224, and when they reached near Venkatayapalem village, their motor cycle dashed the rear portion of a stationed Tractor and trailer, bearing Regn. No.AP27T-5810/5811, as a result of which the deceased received grievous injuries and died on the spot. It is also stated that the deceased was aged about 23 years, and working under 1st respondent, apart from doing business, and used to earn Rs.6,000/- per month.

3. The 1st respondent, owner of the motor cycle, remained *ex parte*, and the 2nd respondent/ Insurance Company filed a counter denying about the manner of the accident, age and earning of the deceased. It is further contended that the petitioner earlier filed similar petition in O.P.No.956 of 2005, which was dismissed on the ground that the owner and insurer of stationed tractor-trailer was not impleaded. It is further contended that the as per the terms

and conditions of the policy, risk of rider of motor cycle, who is brother of 1st respondent, was not covered. Therefore, prayed for dismissal of the petition.

4. The learned Tribunal after taking into consideration, the oral and documentary evidence on record, held that the claimant is not entitled to any compensation for the reason that the accident was occurred only due to the negligence of the deceased himself, who was driving the motor cycle, at the time of accident.

5. The learned counsel appearing for the appellant submits that the Tribunal had erred in holding that the claimant is not entitled to any compensation, that previous OP filed by the same claimant was dismissed for not impleading the owner and insurer of the tractor-trailer, which was stationed on the road to which the deceased dashed his motor cycle, holding that the owner of the tractor-trailer is necessary party to the claim.

6. The learned counsel for the Insurance Company submits that the evidence on record, more particularly, the FIR and the final report filed by the police in the connected crime, clearly shows that the accident was due to the rash and negligent driving of the deceased himself. Therefore, it is submitted that the Tribunal has rightly held that the claimant is not entitled for any compensation.

7. Heard the learned counsel appearing for both the parties and considered the entire material on record.

8. The evidence of the appellant that is placed before the Tribunal is to the effect that her husband died in the accident that took place on 20.01.2003 involving the motor cycle bearing No.

AP20-G-6224, and the Tractor & Trailer, bearing No.AP27T-5810/ 5811. It is also established that the accident took place when the tractor and trailer was stationed on the road side, and the deceased was riding the motor cycle, and rammed into the stationed tractor and trailer. Therefore, the question is as to the negligence on the part of the tractor and trailer in parking on the road side or the deceased himself in driving the motor cycle, so as to mulct with the consequences. As per the oral evidence of PW-1 herself, it is clear that she is not an eye-witness to the incident. PW-2 is the person who claims to be the pillion rider of the motor cycle at the time of accident. According to him, the accident taken place since the tractor and trailer was stationed on the road in a dark place without any precautions. Therefore, the deceased, who was driving the motor cycle, has not noticed the stationed tractor and trailer and dashed against it, which resulted in the instantaneous death of the deceased and injuries to PW-2. Even though PW-2 claimed to be the injured, and also an eye-witness to the accident, he did not file any claim petition seeking any compensation, or no other proof thereof is produced. That apart, in the police records during the course of investigation from First Information Report onwards, it has been consistently observed by the Investigating Agency that the accident occurred solely due to the rash and negligent driving of the deceased himself by dashing against the stationed tractor and trailer.

9. From the recitals of Ex.A.1 it is clear that one B. Bixam lodged the complaint with the police, in which it is clearly mentioned that

during mid night at about 12.30 p.m., the motor cyclist driven the motor cycle in a very high speed, carelessly and negligently and dashed against the stationed tractor and trailer, due to which the person driving the motor-cycle fell down, received injuries and died on the spot. A perusal of the complaint lodged with the police at the earliest point of time also shows that the accident was occurred only due to the rash and negligent driving on the part of the deceased. That apart, after completion of the investigation, the police have not even filed the charge sheet and closed the matter.

10. In addition to the above circumstances, there is another circumstance, which shows that the claimant has previously filed a petition, vide O.P.No.956 of 2005 for the same accident, which was dismissed by the Tribunal holding that the claimant is not entitled to any compensation, and she did not challenge the same. Having suffered a dismissal order of her claim once by the Tribunal, instead of challenging the same, she filed the present O.P. afresh by adding the owner of the tractor and trailer as party. That apart, the previous claim petition was filed by the claimant/ appellant herself seeking compensation of Rs.50,000/- under no fault liability. This shows that the accident occurred only due to the negligence of the deceased, the husband of the appellant/ claimant. Therefore, the Tribunal, after perusing the entire oral and documentary evidence produced before it, has rightly held that the claimant is not entitled for any compensation, and on reappraisal of the evidence on record, I do not see any reason to take any different view, other than the

one taken by the Tribunal. Therefore, there are no merits in the appeal and the same is liable to be dismissed.

11. In the result, the appeal is dismissed, confirming the order and decree passed by the Tribunal. Consequently, the pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M.S.K. JAISWAL, J

Date: 23.06.2017

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THE HON' BLE SRI JUSTICE M. S. K. JAISWAL



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