

THE HON'BLE Ms. JUSTICE J.UMA DEVI

M.A.C.M.A.M.P.No.2631 of 2017

and

M.A.C.M.A.No.1313 of 2010

JUDGMENT:

M.A.C.M.A.No.1313 of 2010 is filed under Section 173 of the Motor Vehicles Act, 1988, by the appellants/claimants, challenging the order, dated 20.11.2009, passed in O.P.No.167 of 2008 by the Chairman of Motor Accidents Claims Tribunal-cum-III Additional District Judge, Anantapur ('the Tribunal', for brevity).

2. M.A.C.M.A.M.P.No.2631 of 2017 is filed by the appellants-claimants requesting this Court to receive the document, i.e., Certified Copy of the Charge-sheet in Crime No.06 of 2007 of Mudigubba Police Station (C.C.No.298 of 2010 on the file of Additional Judicial Magistrate of First Class, Kadiri), dated 27.05.2010, as additional evidence.

3. Heard the learned counsel for the appellants-claimants, learned Standing Counsel for The Oriental Insurance Company limited representing the 2<sup>nd</sup> respondent and perused the record.

4. The appellants are the legal heirs of the deceased Dudekula Dastagiri, who died in a motor accident that occurred on 17.02.2007 due to rash and negligent driving of Van bearing registration No.AP-01-W-400 by its driver. Their claim made for compensation, as against the owner and the insurer of the crime Van, was disallowed by the Tribunal on the ground that they could not establish the involvement of the aforementioned crime Van in the accident.

5. While the appeal was being heard, a request was made by the counsel for the appellant on instructions from the appellant, to receive copy of the charge-sheet along with M.A.C.M.A.M.P.No.2631 of 2017 as additional evidence. According to him, the said document would establish the case of the appellant that the accident, which resulted in the death of the deceased, occurred due to the negligent driving of the Van bearing No.AP-01-W-400, that they could not receive the charge-sheet copy when their case was pending before the Tribunal, since the police concerned filed the charge-sheet, after disposal of their case by the Tribunal, As the charge-sheet was not in existence whilst the pendency of their case before the Tribunal, they could not produce it, despite exercise of their due diligence.

6. The counsel of the other side did not object for receiving of the charge-sheet on record. The only request made by him was to dispose of the main appeal itself looking into the contents of the charge-sheet, or to remand the case to the Court below with a direction to dispose of the claim petition at the earliest. Recording of a finding on factual aspects is within the domain of the trial Court. This Court cannot step into the shoes of the trial Court, acceding to the request made by the counsel for the respondent.

7. It is evident from the material on record that the police of Mudigubba investigated the case and filed charge-sheet on 27.05.2010, by which time O.P.No.167 of 2008 was disposed of by the Tribunal. To establish that the accident, which resulted in the death of the deceased-Dudekula Dastagiri, occurred due to

negligent driving of the driver of the offending Van by its driver, the appellants had examined an eyewitness as P.W.2. But his evidence was not taken into consideration by the Tribunal, as he failed to give full particulars of the offending vehicle. The Tribunal, in its order, observed that the police did not file the charge-sheet and this could be yet another circumstance to doubt the involvement of the crime vehicle in the accident, dated 17.02.2017. As a matter of fact, no charge-sheet was filed by the police by the date of disposal of the claim petition by the Tribunal.

8. Because of the delay, if any, caused by the police in filing the charge-sheet, the claimant shall not suffer. Considering the above facts and circumstances and the submissions made by the learned counsel on record, I am of the view that the matter can be remitted back to the lower Court for fresh disposal. The Tribunal is accordingly directed to record its finding on point No.1, taking into consideration of the charge-sheet in Crime No.06 of 2007 of Mudigubba Police Station (C.C.No.298 of 2010 on the file of Additional Judicial Magistrate of First Class, Kadiri), dated 27.05.2010. The entire exercise of passing of fresh order in O.P.No.167/2008 is to be completed by the Tribunal within six months from the date of receipt of a copy of this order.

9. It is needless to say that by virtue of the order now passed remanding O.P.No.167/2008 to the Court below for fresh disposal, the award impugned in M.A.C.M.A.No.1313 of 2010 no longer survives and the same is hereby set aside.

10. The appeal is disposed of accordingly. MACMAMP No.2631 of 2017 is allowed.

Miscellaneous Petitions pending, if any, shall stand closed.

No order as to costs.

---

JUSTICE J.UMA DEVI

15<sup>th</sup> June, 2018  
Bvv

