

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2175 of 2006

JUDGMENT:

Aggrieved by not awarding compensation as against a claim of Rs.5,00,000/- by the Chairman, Motor Accidents Claims Tribunal, Nalgonda (for short, 'the Tribunal'), vide order, dated 13.06.2006, passed in O.P.No.1239 of 2003, the appellants-claimants preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity).

2. Heard the learned counsel for the appellants-claimants and the learned Standing Counsel for United India Insurance Company Limited, representing the 2nd respondent and perused the record.

3. Learned counsel for the appellants-claimants would contend that the appellants filed claim petition seeking compensation of Rs.5,00,000/- on account of death of Chenna Rajesh (hereinafter referred to as 'the deceased') in a motor accident that occurred on 30.12.2001; that the accident occurred due to rash and negligent driving of driver of lorry bearing No.AP-9-V-989; that the Tribunal without considering the evidence on record in proper perspective with regard to wrong parking of the lorry on road by its driver, erroneously dismissed the claim petition and ultimately, prayed to grant compensation to the appellants. He placed reliance on the decisions reported in **Yerramma and others v. G.Krishnamurthy and another¹** and **Jitta Bikshpathi and another v. R.Venkatreddy and another²**.

¹ (2014) 15 Supreme Court Cases 65

² 2015 (1) ALT 79

4. On the other hand, learned Standing Counsel for the United India Insurance Company Limited, representing the 2nd respondent, would contend that the Tribunal, after considering the oral and documentary evidence, had rightly held that the deceased dashed against the stationed lorry and he was alone responsible for his death and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the following points are framed for consideration:

- 1) Whether the appellants are entitled for an amount of Rs.5,00,000/- as compensation;
- 2) Whether the respondents are liable to pay compensation to the appellants ?

6. **POINTS:**

The Tribunal, while dealing with issue No.1, had examined the entire evidence on record and held that the deceased died due to his rash and negligent driving and there is no fault on the part of driver of offending lorry.

To prove the case of the claimants about rashness and negligence on the part of driver of offending lorry in parking the vehicle on the road, P.W.1, mother of the deceased, was examined. She is not an eyewitness to the incident. P.W.2 spoke about the earnings of the deceased. P.W.3 is driver of the offending lorry, who deposed that on 30.12.2001 when he was proceeding from Jaggaiahpet to Hyderabad with load, the axel of the offending lorry was broken, he parked the lorry on the road near Ratna Agro Chemicals near Veliminedu Village for repairs; that at about 6:30 PM two persons came on a motorcycle from Vijayawada side and dashed against stationed lorry on its rear side, as a result, both of

them fell down and sustained injuries on head and legs. He also deposed about the injured were shifted to Government Hospital, Ramannapet. He did not say about wrong parking of the lorry on the road. He was examined on behalf of appellants. Except this oral evidence, there is no documentary evidence to show that P.W.3 wrongly parked the lorry on the road or he was guilty of not taking precautions in parking the vehicle.

7. In **Yerramma's case (supra)**, the Apex Court, on facts, held that if the driver of the offending vehicle had taken sufficient caution and care, slowed down and allowed reasonable provision for other vehicles on left side of road to pass smoothly, accident in question could have been averted and ultimately, allowed the appeal filed by the claimants therein. In the case on hand, there is no iota of evidence with regard to wrong parking of the offending lorry on the road by its driver. The appellants have relied on Ex.A.1-certified copy of First Information Report in Crime No.128 of 2001 of Chityal Police Station and Ex.A.2-certified copy of inquest report. But, in these two documents, there is no mention of any negligence on the part of driver of offending lorry in wrong parking the lorry on the road. But, at the same time, those two documents reveal that the deceased is responsible for his death due to negligent driving of motorcycle. After going through the entire evidence on record, the Tribunal held that there was no negligence, including contributory negligence, on the part of driver of offending lorry in causing the accident and the deceased alone responsible for his death and decided issue No.1 against the appellants. Therefore, there is nothing to take a different view.

8. With regard to not awarding any compensation, the Court below taking into consideration the facts and circumstances of the case, has not awarded any compensation. When there was no fault or negligence on the part of driver of offending lorry, no liability can be fixed against him. Therefore, there are no grounds to interfere with the impugned order, as it does not suffer from any infirmity so as to call for interference by this Court.

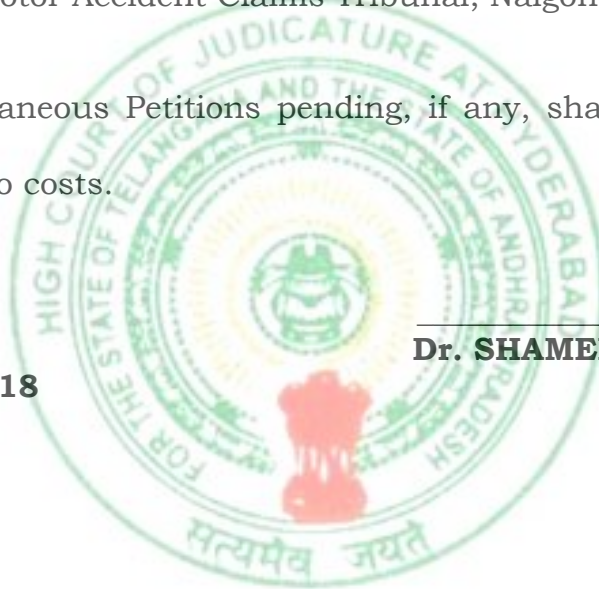
9. Accordingly, the appeal is dismissed confirming the order, dated 13.06.2006, in O.P.No.1239 of 2003 passed by the Chairman, Motor Accident Claims Tribunal, Nalgonda.

Miscellaneous Petitions pending, if any, shall stand closed.

No order as to costs.

JULY 11, 2018
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Dr. SHAMEEM AKTHER, J



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Date:11.07.2018

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