

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

M.A.C.M.A. No. 1471 of 2009

Between:

Pithani Anasuya w/o Venkatasetti

.....Appellant

AND

1. Nandiwada Mary Priya and another

.....Respondents

Date of Judgment pronounced on : 22.06.2018

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers : Yes / No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes / No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes / No
Of the Judgment?

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**M.A.C.M.A. No. 1471 of 2009**

% 22.06.2018

Pithani Anasuya w/o Venkatasetti

...Appellant

Versus

\$ 1. Nandiwada Mary Priya and another

...Respondents.

< **GIST:**

> **HEAD NOTE:**

! Counsel for the Appellant : Ch. Dhanamjaya

^ Counsel for the Respondents : J. Suresh Babu

? **Cases referred**

¹ 2003 (6) ALD 182 (DB)



THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 1471 of 2009

JUDGMENT:

This appeal is arising out of the order dated 15.02.2007 passed in M.V.O.P. No.1168 of 2002 by the VI Additional District Judge-cum-Motor Accidents Claims Tribunal (Fast Track Court), Rajahmundry, East Godavari District.

2. The appellant is the petitioner who has filed a claim petition before the Tribunal, under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.1,50,000/- against respondents 1 and 2 on account of the death of her son, aged about 21 years, in a motor vehicle accident that occurred on 28.06.2002, when her son was driving the Maruti Car No.AP 5Q 6161 and lost control over the vehicle due to non-functioning of the clutch plates of the car and the vehicle fell into the canal near Janakamma Rai Penkuti Sati Garuvu. The Tribunal, on consideration of the material on record, having framed five issues and discussing the matter at length, has directed the petitioner to approach the Commissioner for Workmen's Compensation constituted under the Workmen's Compensation Act, and also awarded costs of Rs.1,000/- to the petitioner payable by the respondents within 30 days from the date of the order.

3. Heard Sri Dhananjaya, learned Senior Counsel appearing for Sri Somasekhar Raichur, advocate on record for the petitioner. None appeared on behalf of the respondents-insurance company.

4. Learned counsel for the petitioner submits that in view of the provision under Clause (2) of Section 166 of the Motor Vehicles Act, the petitioner has an option to choose the forum, and under Section 167 of the Motor Vehicles Act, 1988, the petitioner has the liberty to file claim petition under the Workmen's Compensation Act, 1923, or the Motor Vehicles Act, 1988. Section 166(2) of the Motor Vehicles Act, reads as under:

“Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed.”

Section 167 of the Motor Vehicles Act reads as under:

“Option regarding claims for compensation in certain cases.- Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.”

5. Learned counsel for the petitioner placed reliance on the judgment of this Court in **Kore Laxmi v. United India Insurance Company Limited**¹, paragraph 6 of which reads as under:

¹ 2003 (6) ALD 182 (DB)

“... Hence, we have no hesitation to hold that the dependents of the deceased person are having option either to approach the Commissioner under Workmen’s Compensation Act, since the person died during the course of his employment or under Section 163-A of the Motor Vehicles Act. Since the provisions of the Motor Vehicles Act are more beneficial, the claimants rightly approached the Tribunal under Motor Vehicles Tribunal. Learned counsel for the Insurance Company strenuously contended that the claimants filed application under Section 166 of the Act and as such the Court below gravely erred in applying the table given in Second Schedule to Motor Vehicles Act under Section 163-A of the Act.”

6. No doubt **Kore Laxmi (1 supra)** is not directly applicable to the facts of the case, however, it is obvious that the ratio laid down in the judgment that the claimant has a right to approach the Commissioner under the Workmen’s Compensation Act, 1923, or to approach the Motor Accident Claims Tribunal under the Motor Vehicles Act, 1988. As per Section 167 of the Motor Vehicles Act, 1988, the claimant has an option to choose either of the forums but not both. In the instant case, the petitioner opted to file the claim petition under the Motor Vehicles Act, 1988.

7. Therefore, the impugned order passed by the Tribunal returning the claim petition to the petitioner for presentation before the Commissioner under the Workmen’s Compensation Act, 1923, is not in accordance with law. The petitioner has exercised his option under Section 167 of the Motor Vehicles Act, and filed the claim before the Motor Accidents Claims Tribunal. The object of Section 167 of the Motor Vehicles Act is to make it convenient to the party to approach either of the forum for his quick redressal of the grievance. Therefore,

it is obvious that the appellant has chose to approach Motor Accident Claims Tribunal. Hence, the impugned order passed by the Tribunal is liable to be set aside.

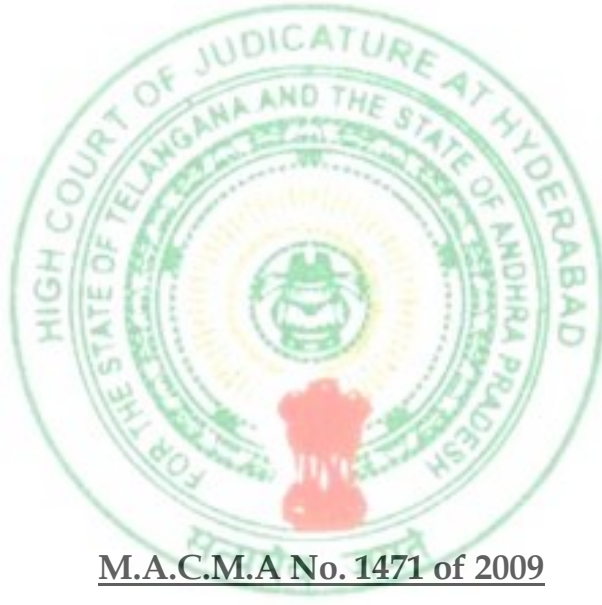
8. **In the result**, the impugned order dated 15.02.2007 passed in M.V.O.P. No.1168 of 2002 by the Tribunal is set aside, and the matter is remanded to the Tribunal for disposal, in accordance with law, within three months from the date of receipt of a copy of this order. Miscellaneous petitions, if any pending, shall stand closed.

22nd June, 2018

KSM

GUDISEVA SHYAM PRASAD, J

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



M.A.C.M.A No. 1471 of 2009

22nd June, 2018

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