

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

THURSDAY THE FIFTEENTH MARCH
TWO THOUSAND AND EIGHTEEN

PRESENT

HONOURABLE SRI JUSTICE A. RAJASHEKER REDY

MACMA.No.589 OF 2006

Between:

Thumu Santa Kumari & Ors. ... Appellants

V/s.

National Insurance Company Limited
Represented by its Divisional Manager,
Divisional Office, Raja Complex,
Canal Road, Eluru,
West Godavari district,
Andhra Pradesh State. ... Respondent



Counsel for the appellants : Sri K.S.R. Hemanth Kumar

Counsel for the Respondent: Sri Agastya Sharma
Standing Counsel

The court made the following: [Judgment follows]

HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

MACMA.No. 589 OF 2006

JUDGMENT :

This Civil Miscellaneous Appeal is filed by the appellants/claimants against the order and decree dated 10/11/2005 passed in MVOP.No.357 of 201 by the IX-Additional District and Sessions Judge, Krishna at Machilipatnam, wherein and whereby the claim made by the appellants, who are the legal heirs of the deceased in a motor vehicle accident was dismissed holding that the appellants/claimants failed to prove the accident.

2. The brief facts, which are necessary for the disposal of this appeal are as follows :

The first petitioner is the wife, second and third petitioners are the sons of the deceased by name T.Veera Venkata Rao, who died in the motor accident.

The deceased started from Vijayawada to Mandya and from Mandya to Siliguru and was driving the lorry bearing No. AP-16V-3978 loaded with Gur and when the vehicle reached Tolanagar on 26/09/1998 at 02:00 p.m., at that time a vehicle bearing No.ORM-6355, which was coming from the opposite direction dashed the lorry in which deceased was travelling, as a result of which the deceased received injuries to his both thigh bones and also received multiple injuries. Immediately after the accident, the deceased was admitted in District Headquarters Hospital, Balasore [Orissa State] at 05:30 p.m., with the help of

passers and on the next day he was discharged from the hospital in order to go to his native place and to have a better medical treatment. On 29/09/1998 the deceased admitted in Myneni Hospital, Vijayawada and underwent operation on his right tibia and left thigh and he had skin grafting from the said hospital on 07/1/1998. Subsequently, he joined in Sri Sai Jyothi Clinic and got operated his right leg and the deceased developed Gangrene since 08/11/1998 to till his death i.e., 29/03/1999. So, the deceased died due to injuries sustained in the above accident. The cause of death is Gangrene [right] leg with septicaemia oldly is grievous.

The particulars of the offending vehicle are not known as the driver of the truck ORM-6355 escaped along with the truck without observing the formalities and even the police did not find out the particulars. The deceased requested the police authorities of Soro Police Station and also send a letter on 17/2/1999 to send the relevant documents with regard to the said accident. The deceased is having valid driving license No. 1494/VJA/1976 and he is the driver-cum-owner of the vehicle bearing No. AP-16V-3978 and the police is a comprehensive one. The deceased is earning monthly Rs.2,500/- and maintaining his family. As per section 163 [A] of Motor Vehicles Act, the owner of motor vehicle or vehicles or the authorised insurer are liable to pay compensation to the petitioners as indicated in II-schedule as the death in this case is caused due to the accident arising out of the use of the motor

vehicle. The deceased insured the vehicle with the respondent under valid policy and the respondent is liable to pay compensation. Hence, this petition.

3. The respondent filed counter denying all the allegations mentioned in the petition. The respondent submits that there is absolutely no proof of accident and receipt of injuries and that the deceased died due to injuries sustained on account of accident. There is no proof of the death in this case caused due to accident arising out of use of motor vehicle. As per the terms and conditions of policy it does not cover liability arising due to bodily injury or death of owner himself. Risk of insured is not covered under the policy. The respondent does not admit the age, income, avocation and health condition of the deceased at the time of accident. The compensation claimed in this case in para 25 of the petition are highly excessive and exorbitant. The respondent further submits that in accident claim cases when the liability of insured is upheld or fixed or decreed then only insurer indemnification arises and insurer will step into the shoes of insured and indemnify loss sustained. Hence, the respondent is not liable to pay any compensation and prays to dismiss the petition with costs.

4. On the basis of the above pleadings, the Tribunal framed the following issues for trial :

- i) Whether there is rash and negligent driving the vehicle by its driver ?

- ii) Whether the petitioners are entitled to claim compensation, if so, to what amount and from which of the respondent ?
- (iii) To what relief ?

Additional issues 1 & 2 :

- (i) Whether late Veera Venkata Rao, the deceased owner-cum-driver of lorry AP-16V-3978 died due to injuries sustained on account of accident in the absence of proof of death ?
- (ii) Whether the petitioners are entitled to claim compensation against the respondent by virtue of death of owner of crime vehicle as LR's ?

5. To substantiate their claim, the first petitioner herself was examined as PW-1 and her father was examined as PW-2 and one eye-witness was examined as PW-3 and private medical practitioner was examined as PW-4 and marked Exs.A-1 to A-11, Ex.C-1 and Ex.C-2 and Ex.X-1 were marked. On behalf of the respondent, RW-1 was examined and marked Ex.B-1.

6. After hearing both sides and on appreciation of oral and documentary evidence placed on record, the Tribunal dismissed the claim-petition holding that the petitioners, who are the legal heirs of the deceased, are not entitled for any compensation from the respondent, as the policy does not cover the risk of owner. Challenging the order and decree dated 10/11/2005 passed in MVOP.No.357 of 201 by the IX-Additional District and Sessions Judge, Krishna at Machilipatnam, the petitioners preferred the present appeal.

7. Sri K.S.R. Hemanth Kumar, learned counsel for the appellants submits that the Tribunal without appreciating the oral evidence of PW-3 and also Exs.A-1 to A-6 came to a wrong conclusion that the appellants/claimants failed to prove the accident. He submits that Ex.A-1 clearly goes to show that the manner in which the accident occurred within the limits of Soro Police Station, Orissa State and that the deceased was admitted in District Headquarters Hospital, Balasore, which coupled with the documentary evidence, Exs.A-3 to A-6, which goes to show that the deceased sustained injuries in the accident and that he died due to the injuries. He submits that strict proof beyond all reasonable doubt is the criteria for awarding compensation to the victims of motor vehicle accident, as the Motor Vehicles Act is a beneficial piece of legislation enacted for the benefit of victims of the motor vehicle accidents. The Tribunal failed to consider the above factors and arrived at a wrong conclusion. The trial in the accident cases is summary in nature unlike in civil proceedings. In support of his contention, he relied on a judgment of this Court in **NEW INDIA ASSURANCE COMPANY LIMITED KAKINADA V/s. KETHAVARAPU SATYA VATHI AND ORS.**¹, and the judgment of the Hon'ble Supreme Court in **PARMESHWARI V/s. AMIR CHAND AND ORS.**².

8. On the other hand, Sri Agstya Sharma, learned Standing Counsel for the respondent-Insurance Company submits that no F.I.R. was registered at Balasore or Soro Police Station of Orissa

¹) 2010 [2] ALD-403 [DB]

²) A I R 2011 SUPREME COURT 1504 [From : Punjab and Haryana]

State to show that the accident occurred and that the deceased sustained injuries and died due to injuries in the accident and that the cause of death was due to Gangrene [right] leg with septicaemia. Even any claim under section 166-A of the Motor Vehicles Act, the claimants have to prove the accident, the manner in which the accident took place and the injuries sustained by the injured/claimant. But in the present case on hand, no documentary evidence is produced for proving the accident except the evidence of PW-3, which is also not trust worthy, as such the Tribunal below came to the right conclusion that the appellants/claimants failed to prove the accident. He also submits that no case sheet is produced by PW-4 to show that the deceased had taken treatment under him, and as such, no interference is called for.

9. Now the point for consideration is :

“ Whether the appellants/claimants have proved the accident arising out of vehicle bearing No. AP-16V-3978 at Tolanagar, Balasore, Orissa State on 26/09/1998 at 02:00 p.m. ? ”

10. The only evidence of PW-3 is available for the said aspect. Though, PW-3 stated to be an eye-witness to the accident but the evidence of PW-3 clearly goes to show that he is not an eye-witness to the alleged accident. Though, PW-3 stated that the accident occurred at Tolanagar, within the limits of Soro Police Station, Balasore Headquarters, Orissa State and he admitted that after the accident, he shifted the injured to Government Hospital, Balasore and thereafter two days he shifted the injured to

Vijayawada. The driver of the vehicle bearing No.AP-16V-3978 deposed that he along with the deceased started from Vijayawada to Orissa. When the lorry reached near Balasore, the deceased overtook another lorry which was going ahead of the lorry and at that time the lorry coming in opposite direction dashed the vehicle in which deceased was travelling. As a result of which, the accident occurred and the deceased lorry driver's right leg crushed and fractured. He shifted the injured to Government Hospital at Balasore. After two days with the help of another driver he shifted the injured driver to Vijayawada. The police also recorded the statement of injured at Balasore. Thereafter, he was shifted to Shyam Sundar Hospital, Machilipatnam. On 29/3/2000 the deceased died due to the injuries sustained by him in the accident. He also deposed that he is having driving license. In the cross-examination, PW-3 admitted that he never gave any report about the accident to the concerned authority either in Balasore or in Machilipatnam. PW-3 also admitted that there is no documentary evidence to show that he was travelling with the deceased on the said lorry. PW-3 denied the suggestion that he was accompanying the deceased. PW-1 is the wife of the deceased. She deposed the contents of the claim-petition and through her Exs.A-1 to A-4 were marked. Ex.A-1 is the Xerox copy of certificate issued by Soro Police Station, Balasore as F.I.R. Ex.A-2 is the discharge ticket issued by the Medical Officer, District Headquarters Hospital, Balasore. Ex.A-3 xerox copy of certificate issued by Dr.M.V. Subba Rao,

Ex.A-4 is the death certificate issued by Dr.V. Syamsundar Rao.

Ex.C-1 is the handover summons issued by the Tribunal to the Police Balasore and Ex.C-2 is the endorsement made by the Station House Officer, Soro Police Station, Balasore.

11. PW-2 is the father-in-law of the deceased. He also deposed about the accident and through him Ex.A-5 two prescriptions issued by the Dr. M.V. Subbarao were marked. Ex.A-6 is the certificate issued by Dr.M.V. Subbarao. PW-4 is the Civil Assistant Surgeon, Government Head Quarters Hospital, Avanigadda, who stated that he has treated the deceased for one year i.e., till his death and he issued Ex.A-4. PW-4 stated that the cause of death in the certificate is due to 'gangrene'.

12. RW-1 was the Branch Manager of respondent/Insurance Company stated that Ex.B-1 is the policy which covers only the third party but the said policy cannot cover the risk of insured/owner. Though Ex.A-1 goes to show that the accident occurred at Tolanagar of Orissa State, within the limits of Soro Police Station of Balasore district on 26/09/1998 and whereas Ex.A-2 goes to show the discharge ticket issued by the Medical Officer, District Headquarters Hospital, Balasore district. Exs.A-1 and A-2 goes to show that the accident occurred at the aforesaid place but as per the contention of the learned counsel for the appellants/claimants, the doctor, who issued Ex.A-2 was not examined and Ex.C-1 summons are sent by the Tribunal and Ex.C-2 shows that the Station House Officer, Soro Police Station, Balasore

district, Orissa State, made endorsement but no F.I.R. was registered. If F.I.R. is not registered then it does not mean that the accident has not occurred and as per the judgment of this Court in **NEW INDIA ASSURANCE COMPANY LTD., KAKINADA V/s. KETHAVARAPU SATYAVATHI AND ORS.** ³, wherein this Court held at Para No. 9 as follows :

9. “ In fact, the decision in *Pallavan Transport Corporation V/s. Saroj Goyal*, 2003 ACJ-475, referred to in the grounds of review is an answer to the contentions of the review petitioner. Hon’ble Sri Justice P. Sathasivam [as His Lordship then was] speaking for the Division Bench, made it clear that though the claimants failed to place the first information report, sketch relating to the scene of accident, inasmuch as the Motor Accidents Claims Tribunal must take special care to see that innocent victims did not suffer and owners and drivers do not escape liability merely because of some doubt here and there, culpability must be inferred from the circumstances where it is fairly reasonable. While noting that even in the absence of materials i.e., police records, first information report, sketch, etc., if the evidence of eye-witness who was said to have witnessed the occurrence is acceptable, the Tribunal can safely rely upon the said evidence, it was made clear that merely because the eye-witness did not inform the police nor made any specific complaint, did not diminish his statement before the Court regarding the manner of accident, if the evidence of the said witness is cogent, natural and probable. The Division Bench also referred to with approval an earlier Division Bench decision of the High Court of Mysore holding that merely because the witness was not examined by the Police or that he was not examined in the connected criminal case, it cannot be said that his evidence should not be relied upon ”.

13. In similar situation, the Hon’ble Supreme Court in **PARMESHWARI V/s. AMIR CHAND AND ORS.** ⁴, held at Para Nos.10 and 12 as follows :

10. Unfortunately, this Court finds that the said well-considered decision of the Tribunal was set aside by the High

³) 2010 [2] ALD-403 [DB]

⁴) A.I.R. 2011 SUPREME COURT-1504

Court, inter alia, on the ground that even though complaint was forwarded to SSP Hisar and was further forwarded to SSP Hanumangarh but none from the Office of SSP, Hanumangarh came to prove the complaint. The filing of the complaint by the appellant is not disputed, as it appears from the evidence of PW-3 Satbir singh, who is the Assistant Complaint Clerk in the office of Superintendent of Police, Hisar. If the filing of the complaint is not disputed, the decision of the Tribunal cannot be reversed on the ground that nobody came from the office of SSP to prove the complaint. The official procedure in matters of proceeding with the complaint is not within the control of the appellant, who is an ordinary village woman. She is not coming from the upper echelon of society. The general apathy of the administration in dealing with complaints lodged by ordinary citizens is far too well known to be overlooked by High Court. In this regard, the perception of the High Court in disbelieving the complaint betrays a lack of sensitized approach to the plight of a victim in a motor accident claim case.

12. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitized enough to appreciate the plight of the victim. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in Bimla Devi and others V/s. Himachal Road Transport Corporation and others [(2009) 13 SCC 530] : (AIR 2009 SC-2819) are very pertinent".

14. No doubt, PW-4 Dr.V.Syamsundar has given treatment for one year but the deceased died on 2903/2000. Though the claimants are able to prove that the accident occurred but there is no evidence to prove that the deceased died due to the accident after six months. Even if it is presumed that the deceased died due to the injuries sustained in the accident, since he is stated to be the owner-cum-driver of the lorry, the respondent-Insurance Company is not liable to pay the compensation as the terms and conditions of Ex.B-1 policy covers only the third party but the said policy cannot cover the risk of insured/owner. In view of the same, the deceased being himself owner of the vehicle, the Insurance

Company is not liable to pay the compensation. In view of the same, no relief can be granted to the appellants/claimants.

15. Accordingly, this Civil Miscellaneous Appeal is dismissed.

No costs.

16. As a sequel, miscellaneous petitions if any, pending in this M.A.C.M.A., shall stand closed.

JUSTICE A. RAJASHEKER REDDY.



15/03/2018
I s L

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY



Date: 15/03/2018
Circulation No. 198
Court Master: I s L