

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 4162 of 2012

JUDGMENT:

This appeal is arising out of the Order and Decree dated 10.10.2011 passed in O.P.No.12 of 2010 by the Chairman, Motor Accident Claims Tribunal (VIII Additional District Judge), at Nizamabad. The appellant herein is the 2nd respondent, and the respondents herein are the claimants before the Tribunal.

2. Brief facts of the case are as under:

On 20.01.2009, one Abdul Waheed (hereinafter referred to as 'the deceased'), a resident of Thirmanpally village, along with one Abdul Farooq, went to Gandhari to purchase Ox, and after purchasing an Ox, he was returning to his village on foot. When he reached near Chandrayanpalli village shivar (outskirts), at about 1-00 AM, one Jeep bearing No.AP-25A-5599, driven by its driver in a rash and negligent manner dashed the deceased. As a result, the deceased sustained grievous head injury and died on the spot. Alleging that the accident occurred due to the rash and negligent driving by the driver of the offending Jeep, and stating that the deceased was earning Rs.10,000/- per month by doing agriculture work, the claimants-legal heirs of the deceased filed a claim petition, O.P.No.12 of 2010, before the Tribunal, under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.10,00,000/- against respondents 1 and 2, the driver and owner of the offending Jeep.

Respondent No.1-driver remained ex parte. Respondent No.2-owner filed written statement denying the allegations in the claim petition. It is averred in the written statement that the Jeep was entrusted to the Office of Tahsildar, Kamareddy, and

one Rajesham was entrusted to work as driver of the Jeep as the regular driver Bala Kishan was not present, and that the Junior Assistant, Senior Assistant (Elections), Attender, Computer Operator, and Chairman were deputed to the Office of District Collector, Nizamabad, for verification of Electoral Rolls of Kamareddy Assembly constituency and for transportation to Tahsil Office, Kamareddy, and the said staff members, after completion of their work, were returning to Kamareddy in the Jeep, and when they reached near Chandrayanpally village outskirts on the intervening night of 20/21.01.2009, at about 1-00 AM, the axle of the Jeep was broken and the back side of the wheel came off and as the Jeep became immobile, it was kept on Jack and the staff returned to Kamareddy by other means of transport and, therefore, no accident, as alleged by the claimants in their claim petition, has occurred with the Jeep on the said intervening night and, therefore, the allegation of the petitioners, that the accident occurred due to rash and negligent driving of the driver of the Jeep, is absolutely false and baseless and, therefore, the claimants are not entitled for claiming compensation.

Basing on the pleadings, the Tribunal framed three issues. First issue is with regard to the rash and negligent driving; Second, with regard to the claimants entitlement to compensation; and, third, with regard to the quantum of relief.

The Tribunal, on considering the evidence of witnesses PWs.1 to 3, and the documents Exs.A1 to A6 on behalf of claimants; and the evidence of witnesses RWs.1 to 3, and the documents Exs.B1 and B2 on behalf of respondents; has held that the accident occurred due to the rash and negligent driving by the driver of offending Jeep and, therefore, awarded compensation of

Rs.3,91,000/- against respondent Nos.1 and 2, the driver and owner of the offending Jeep.

Aggrieved by the order passed by the Tribunal, the respondent No.2-District Collector, Nizamabad, has preferred this appeal.

3. Heard the arguments of the learned G.P. for Arbitration, appearing on behalf of the appellant. No representation for the respondents-claimants.

4. Learned counsel for the appellant submitted that the appellant is not disputing the quantum of compensation, but only disputing the manner in which the accident has occurred. It is contended that the accident occurred while the Jeep was parked off the road, and that the Jeep was not driven by the respondent No.1 in a rash and negligent manner so as to cause the accident.

5. The evidence of PW.2, who is an eyewitness to the accident, would reveal that on the intervening night of 20/21.01.2009, he, along with one Chinta Kishan, was returning on motorcycle from Kamareddy to their village Thirmanpally, and when they reached near Chandrayanpally village outskirts, one Jeep bearing No.AP-25A-5599, driven by its driver in a rash and negligent manner, at a high speed, dashed the deceased, due to which the deceased fell down on the road and sustained grievous head injury and died on the spot. Ex.A1-C.C. of FIR, shows that the accident occurred due to the rash and negligent driving by the driver of the Jeep, resulting in the death of the deceased. Ex.A4-Charge Sheet was filed by the police alleging that the driver of the offending Jeep had driven the Jeep in a rash and negligent manner resulting in the accident and death of the deceased.

6. It is pertinent to note that PW.2 was shown as a prosecution witness in the charge sheet Ex.A4. The Tribunal has also placed reliance on the testimony of Motor Vehicle Inspector who gave a report Ex.A5 stating that the accident occurred not on account of any mechanical defects in the vehicle. The Tribunal, taking into consideration the testimony of an eyewitness PW.2 and Ex.A5-report of the Motor Vehicle Inspector, has observed that in view of the evidence of PW.2 and Ex.A5, the testimony of RWs.1 to 3 who are the driver and other subordinate staff of the 2nd respondent cannot be relied upon. On consideration of the facts and circumstance of the case, and in view of the evidence of eye witness PW.2 and the Ex.A5-report of the Motor Vehicle Inspector, that the accident did not occur due to mechanical defect in the offending Jeep, the Tribunal has rightly come to the conclusion that the accident occurred due to the rash and negligent driving by the driver of the offending Jeep. The contention of the appellant that the Jeep became immobile as its axle got broken and the Jeep was kept on Jack and there was a mechanical defect in the vehicle, was disproved by Ex.A5-report of the Motor Vehicle Inspector, and the fact of the deceased sustaining grievous head injury in the accident due to rash and negligent driving by the driver of the Jeep was proved by the evidence of PW.2 who is an eyewitness to the accident.

7. Therefore, considering the facts and circumstances of the case, and the oral and documentary evidence available on record, the Tribunal has rightly come to the conclusion that the accident occurred due to the rash and negligent driving by the driver of the offending Jeep bearing No. AP-25A-5599, and rightly awarded the compensation of Rs.3,91,000/- to the claimants, holding respondent Nos.1 and 2 jointly and severally liable to pay the

compensation. Therefore, there is no reason to upset the findings recorded by the Tribunal and to set aside the impugned order. The appeal lacks merit and is liable to be dismissed.

8. **IN THE RESULT**, the appeal is dismissed, confirming the Order and Decree dated 10.10.2011 passed by the Tribunal in O.P.No.12 of 2010. No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

GUDISEVA SHYAM PRASAD, J

14th February, 2018

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THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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