

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1479 of 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellants-claimants, challenging the order, dated 14.06.2004, passed in O.P.No.1660 of 2000, by the Motor Accident Claims Tribunal-cum-Additional Special Judge for SPE & ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad ('the Tribunal', for brevity), whereby, their claim petition claiming a compensation of Rs.7,25,000/- for the death of the deceased-M.R.Ravinder due to the rash and negligent driving of the driver of the auto bearing registration No.AP-13-U-8360 was dismissed.

2. Heard the learned Standing Counsel for the 2nd respondent-Insurance Company and perused the record. Despite listing this matter under the caption "For Orders", there is no representation for the appellants-claimants. This appeal is of the year 2005. Hence, this appeal can be disposed of on merits, basing on the material available on record, without waiting for the learned counsel for the appellants-claimants to advance arguments.

3. The learned Standing Counsel for the 2nd respondent-Insurance Company would contend that there is no evidence on record to establish that the subject accident occurred on 16.07.2000, due to rash and negligent driving of the driver of the auto bearing registration No.AP-13-U-8360. There is also no

evidence to substantiate that the said auto met with the subject accident on 16.07.2000 and at the time of the said accident, the deceased-M.R.Ravinder was travelling by the said auto. The Tribunal had elaborately discussed the oral and documentary evidence on record and rightly held that it is doubtful whether the auto bearing registration No.AP-13-U-8360 was involved in the subject accident occurred on 16.07.2000 and rightly dismissed the claim of the appellants-claimants. There are no circumstances to interfere with the impugned order and ultimately prayed to dismiss the appeal by confirming the order under challenge.

4. In the grounds of appeal, the appellants-claimants contended that the findings of the Tribunal are contrary to law and facts. The Tribunal failed to appreciate the evidence on record in right perspective. The Tribunal ought to have granted the compensation of Rs.2,23,000/- assessed by it in favour of the appellants-claimants, in view of ample evidence on record to substantiate that the deceased-M.R.Ravinder died due to the injuries suffered by him in the subject accident occurred due to rash and negligent driving of the driver of the auto bearing registration No.AP-13-U-8360 and ultimately prayed to allow the appeal by granting compensation to the appellants-claimants.

5. In view of the above submissions, the points that arise for determination in this appeal are as follows:-

1. Whether the deceased-M.R.Ravinder died due to the injuries suffered by him in the subject accident occurred on 16.07.2000, due to rash and negligent driving of the driver of the auto bearing registration No.AP-13-U-8360?

2. Whether the appellants-claimants are entitled for grant of compensation as claimed?

Point No.1:-

6. To substantiate the claim of the appellants-claimants, the 1st appellant-1st claimant deposed as P.W.1, got examined P.W.2-Shaik Lateef and P.W.3-S.Muralikrishna and got marked Exs.A.1 to A.8. P.W.1 is the wife of the deceased. She is an interested witness. Moreover, she is not an eye-witness to the subject accident. Hence, it is not safe to act upon her evidence. P.W.2 stated in his examination-in-chief that on the intervening night of 15/16.07.2000, at about 03:45 hrs, he saw an auto on Sultanpura road coming from Kalikabar side; the driver stopped the auto and dragged out a person from the auto and thrown him on the road and went away in the auto in spite of his shouting to stop. He stated in his cross-examination that he did not witness the subject accident. Ex.A.1-Certified copy of FIR reveals that the police, Mirchowk, registered a case in Cr.No.85/00 under Section 174 of Cr.P.C., on the basis of the complaint given by Ghulam Ahmed, ASI of Police. Ex.A.2-Post-mortem report reveals that the deceased received as many as 13 injuries and that he died due to head injury. It is mentioned in Ex.A.3-Charge-sheet that the driver of the auto bearing registration No.AP-13-U-8360 confessed before the police that he drove the said auto in a drunken state on the intervening night of 15/16.07.2000 and dashed against a running lorry coming from the opposite direction, as a result of which, a passenger in the auto received bleeding injuries and

subsequently died. It is mentioned in Ex.A.3-Charge-sheet that P.W.2 witnessed the subject accident. But P.W.2 nowhere stated in his evidence that he witnessed the subject accident. The police filed Ex.A.3-Charge-sheet against the driver of the auto solely basing on his confessional statement. The confession made by the accused in the presence of police is inadmissible in evidence. In the absence of any clinching evidence to prove that the deceased-M.R.Ravinder died due to the accidental injuries suffered by him in the subject accident occurred due to rash and negligent driving of the driver of the auto bearing registration No.AP-13-U-8360, the Tribunal rightly held that the subject accident did not occur due to the rash and negligent driving of the driver of auto bearing registration No.AP-13-U-8360. There is nothing to take a different view. This point is accordingly answered in favour of the 2nd respondent-Insurance Company and against the appellants-claimants.

Point No.2:-

7. The Tribunal, after analysing the entire evidence on record in correct perspective, though assessed a compensation of Rs.2,04,000/- towards loss of dependency, Rs.15,000/- towards loss of consortium and Rs.4,000/- towards funeral expenses, damages to clothes and transportation expenses, declined to award the same to the appellants-claimants, since they failed to prove that the deceased-M.R.Ravinder died due to the accidental injuries suffered by him in the subject accident occurred due to rash and negligent driving of the driver of the auto bearing

registration No.AP-13-U-8360. There is no infirmity in the findings of the Tribunal. There are no circumstances to interfere with the impugned order. The appeal is devoid of merit and is liable to be dismissed.

8. In the result, the appeal is dismissed. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

20th September, 2018
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