

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.No.3258 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellants/claimants aggrieved by the dismissal order passed by the Chairman, Motor Accident Claims Tribunal – cum – III Additional District Judge (Fast Track Court), Adilabad at Asifabad (for short, “the Tribunal”) *vide* order, dated 10.02.2005, passed in O.P.No.502 of 2003.

2. Heard the submissions of the learned counsel appearing for the appellants/claimants and the learned Standing Counsel for the United India Insurance Company Limited appearing for respondent No.2, and perused the record.

3. Learned counsel for the appellants/claimants would contend that the appellants/claimants are the wife and son respectively of one Kurapti Venkati (hereinafter, referred to as “the deceased”); that the deceased suffered grievous injuries in a motor accident that took place on 18.07.2002 and succumbed to those injuries on 31.12.2002, and during the said period, he underwent treatment; that the driver of the offending vehicle – Jeep bearing No.AP-1-U-4167 also admitted the offence; that the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the said offending vehicle, but it did not hold that the deceased died due to the injuries sustained by him in the said motor accident and dismissed the O.P. and ultimately, prayed to set aside the impugned order and allow the appeal as prayed for.

4. On the other hand, learned Standing Counsel for the United India Insurance Company Limited appearing for respondent No.2 would contend that the Tribunal had rightly held that the deceased did not die due to the injuries sustained by him in the subject motor accident and there is no evidence to substantiate the same; that the Tribunal rightly dismissed the claim petition of the appellants and ultimately, prayed to dismiss this appeal also.

5. In view of the submissions made by both the counsel, the point that falls for determination is:

“Whether the appellants/claimants are entitled for compensation as prayed for?”

6. **POINT:-** To substantiate the claim of the appellants/claimants, claimant No.1 was examined as P.W.1. She stated that her husband suffered injuries in the aforesaid accident and succumbed to those injuries. Exs.A-1 to A-4 were marked on behalf of the claimants. Ex.A-1 is the xerox copy of F.I.R. Ex.A-2 is the certified copy of medical certificate. Ex.A-3 is the xerox copy of driving license and Ex.A-4 is the xerox copy of the insurance over note. No witness was examined on behalf of the respondents. Ex.B-1 - xerox copy of charge sheet and Ex.B-2 - copy of order passed in Lok Adalat were marked.

7. As per the evidence on record, on 18.07.2002, when the deceased was proceeding on a scooter bearing No.AP-15-B-9183 as a pillion rider from Timmapur cross road to Ramakrishnapur and when he reached near Vittal Nagar, suddenly the Jeep bearing No.AP-1-U-4167 came there in a rash and negligent manner and dashed the scooter of the deceased as a result of which, the

scooterist and the deceased fell down and received grievous injuries. Ex.A-2 is the wound certificate of the deceased wherein it is mentioned that the deceased suffered compound fracture of both bones of his right leg. The certificate was issued by the Medical Officer, Area Hospital. Admittedly, the appellants/claimants have not filed any death certificate of the deceased. Further, there is no Post Mortem report. The driver of the jeep was being prosecuted for the offence punishable under Section 338 I.P.C. Basing on the evidence, the Tribunal held that the accident and injuries were caused due to the rash and negligent driving of the Jeep bearing No.AP-1-U-4167 by its driver. There is no infirmity in the said finding. P.W.1 also corroborated the injuries of the deceased mentioned in Ex.A-2 – wound certificate. There is also record to believe that the deceased died on 31.12.2002, but there is no record to prove that the deceased succumbed to the injuries suffered in the aforesaid accident. When the deceased has suffered two grievous injuries to his right leg, the Tribunal ought to have granted compensation on this score. Taking this into consideration, the appellants/claimants are entitled to compensation of Rs.30,000/- towards hospitalisation, transportation and medical expenses; and Rs.20,000/- towards attendant charges, expenses incurred for extra nourishment and loss of earnings caused to them. Thus, the appellants/claimants are entitled for a total compensation of Rs.50,000/- against the respondents 1 and 2/owner and insurer of the offending vehicle/Jeep bearing No.AP-1-U-4167, as there was valid insurance to the offending vehicle.

8. Accordingly, the appeal is partly allowed setting aside the order, dated 10.02.2005, passed in O.P.No.502 of 2003 by the Tribunal and awarding an amount of Rs.50,000/- (Rupees fifty thousand only) to the appellants/claimants towards compensation. The appellants/claimants are also entitled for interest at the rate of 7.5% per annum from the date of petition till realisation. Respondent Nos.1 and 2 are jointly and severally liable to pay the compensation awarded. On deposit of the compensation, the appellants/claimants are permitted to withdraw the entire amount along with the accrued interest equally. There shall be no order as to costs.

9. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

Date : 19.07.2018
AMD

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