

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO. 1101 OF 2016

JUDGMENT:

This appeal is directed by the insurance company against the order and decree dated 26.10.2015 passed in M.V.O.P.No.2270 of 2012 by the Motor Accidents Claims Tribunal-cum-XIV Additional Chief Judge, FTC, City Civil Court, Hyderabad (for short 'the Tribunal) awarding compensation of Rs.21,85,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realization and making the respondents jointly and severally liable to pay the compensation, as against the claim of Rs.25,00,000/- on account of the accident occurred on 04/05.07.2012.

2. Before the tribunal, in order to prove the case of the claimants, PWs.1 to 3 were examined and marked Exs.A1 to A.19. On behalf of the respondents, RW.1 was examined and marked Ex.B.1 to B.6.

3. Learned standing counsel for the insurance company submitted that it is a hit and run case and that the vehicle involved in the crime was unknown and that there was no eye witness according to Ex.A.1-FIR and Ex.A.3-inquest panchanama. Even as per the evidence of PW.2, who supposed to be eye witness, according to the claimants, in his cross examination, he has not supported the case of the claimants and in turn he was not present at the scene of offence. Ex.A.13-Memorandum of marks in

LLB marked by PW.3, employer indicates that the deceased was pursuing LLB cannot be relied upon, because once if it is held that the deceased was a full time student he cannot do private employment. In view of the contradiction in Ex.A.13, it cannot be relied upon since the investigation has not conducted properly, the entire evidence has to be re-appreciated and the matter needs to be remanded for fresh investigation by the police and that the award passed by the tribunal is excessive in all aspects.

4. Learned counsel for the claimants contended that the owner of the crime vehicle in his statement before the police categorically admitted that he is the owner of the vehicle and on the date of accident, the said vehicle has been handed over to his brother-in-law, who was driven the vehicle and committed accident. There was no delay in filing the complaint and in issuing FIR since the accident has taken place at 12' O clock on the intervening night of 4/5.07.2012 and the complaint has been registered on the early hours. The counter affidavit filed by the insurance company before the tribunal is also silent on the contradictions of hit and run case and also regarding the evidence of PW.2. The reliance placed by the insurance company with regard to the trial Court acquittal order is of no relevance in the case of accident claim OPs. With regard to determining the compensation, the tribunal rightly considered the claim of the petitioner and granted compensation and hence, the order passed by the tribunal is well considered and needs no interference of this Court.

5. There was no dispute with regard to the manner of accident. The evidence of RW.1 did not indicate any reason as to why the evidence of PW.2 has to be ignored. The tribunal has rightly placed on the evidence of PW.2, who supposed to be an eye witness. It is not necessary that PW.2 being eye witness, if he has not filed any complaint before the police, he is not an eye witness and his evidence cannot be relied upon. Ex.A.2-c.c. of final result filed by the Investigating Officer is placed on record before the tribunal after thorough investigation and the charge sheet has been filed for the offence under Section 304-A IPC. Since the insurance company has not made out any case before the tribunal in terms of its evidence, now in appeal it cannot improve its case. Therefore, the order of the tribunal is liable to be confirmed.

6. In view of the above, the appeal filed by the insurance company is dismissed confirming the order and decree dated 26.10.2015 passed in M.V.O.P.No.2270 of 2012 by the Motor Accidents Claims Tribunal-cum-XIV Additional Chief Judge, FTC, City Civil Court, Hyderabad. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

T.AMARNATH GOUD,J

Date: 06-11-2019
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