

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.602 OF 2007

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 14-11-2006 passed in O.P.No.749 of 2002 by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge at Karimnagar (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the wife, appellant Nos.2 to 5 are the children and appellant No.6 is the mother of the deceased, Mohd. Qhamuroddin. The deceased was working as Constable in Police Station, Telkapalli of Mahaboobnagar District. While so, on 16.11.2000 at about 7.30 pm., while the deceased was proceeding on his scooter for serving summons in C.C.Nos.773/2000 and 180/2000, and when he reached Telkapalli B.T. Road, a tractor-trailor bearing No.AP22T 4687/4688 came in a rash and negligent manner and dashed the scooter, due to which, the deceased fell down and sustained grievous injuries. Immediately, he was shifted to Government Hospital, Nagarkurnool, and from there, to NIMS, Hyderabad, where he died on 18.11.000 while undergoing treatment. The appellants filed the above OP against respondent Nos.1 to 3, driver, owner and insurer of the tractor-trailor, claiming compensation of Rs.10,00,000/- for the death of the deceased.

3. Before the Tribunal, respondent Nos.1 and filed a counter stating that the accident had occurred due to the rash and

negligent driving by the deceased and that respondent No.1 was having valid driving license and the crime vehicle was insured with respondent No.3 and hence, if any compensation would be awarded, the same has to be paid by respondent No.3. Respondent No.3 filed counter denying the allegations made in the claim petition *inter alia* contending that the amount of compensation claimed by the claimant is excessive, exorbitant, imaginary and out of proportion and sought to dismiss the petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the claimants failed to prove that the aforesaid tractor-trailor involved in the accident and accordingly, dismissed the claim petition. Challenging the same, the appellants filed the present appeal.

5. Sri Ramachandar Rao Vemuganti, learned counsel for the appellants, submits that the tractor-trailor in question was very much involved in the accident. In FIR, the particulars of the vehicle were not mentioned because the complaint was lodged by the brother of the deceased, who is not an eyewitness to the incident and hence, mere non-mentioning of the vehicle particulars is not a consequence. He further submits that though the offending vehicle number was not mentioned in FIR, the depositions of P.Ws.3 and 4, who are the eyewitnesses to the incident, clearly state that the tractor-trailor in question was involved in the accident. He further submits that though there is a delay in sending the FIR to the Court, the evidence of eyewitnesses

will prevail and Section 161 Cr.P.C. statements recorded by P.W.5 are not admissible in evidence. In cases of this nature, one cannot find fault with the delay in lodging the report. Basing on the aforesaid submissions, he prays to set aside the order of the Tribunal and to grant just compensation. In support of his arguments, he relied on decisions of Apex Court in **Dulcina Fernandes and Others V. Joaquim Xavier Cruz and Another**¹ and **Vimla Devi V. National Insurance Co. Ltd.**² and a decision of this Court in **Bodige Padma V. Makula Shanker**.

6. Smt.P.Satya Manjula, learned Standing Counsel for respondent No.3, submits that the tractor-trailor in question was not involved in the accident. She further submitted that admittedly, the deceased was hit by an unknown vehicle as is evident from Ex.A.1-FIR and that the case is a hit and run and hence, the Tribunal rightly dismissed the claim petition. She further submits that though P.Ws.3 and 4 are stated to be eyewitnesses, there are certain contradictory statements in their depositions and hence, the Tribunal disbelieved the claim of the appellants and dismissed the same. She further submits that the tractor-trailor in question is a planted one and as the appellants could not file any documentary proof to show that the tractor-trailor in question involved in the accident, the Tribunal rightly dismissed the claim petition and hence, she prays to dismiss the appeal.

¹ 2013 (6) ALD 152 (SC)

² 2019 ACJ 454

7. It is seen from the record that in Ex.A.1 and even in the statements of P.W.1 and her relatives, it is clearly stated that an unknown vehicle involved in the accident. P.W.4 is stated to be the eyewitnesses. According to him, on the day of accident at about 7.30 pm., he was proceeding on a scooter and he observed that a tractor in opposite direction which was following a scooter and the tractor dashed to the scooter from its back, as a result, the scooterist fell down. Then he went to the place of accident and noted the tractor number as AP22T 4687/4688 and the driver of the tractor escaped from the place of accident and he noticed deceased lying in a pool of blood and he frightened, so left that place. The Tribunal discussed about the said deposition and disbelieved the same stating that when the accident occurred in the night time, in the focus of opposite vehicle, identifying the vehicle is impossible and not probable. The Tribunal, noticing the fact of keeping blank the date and place in the 161 Cr.P.C statements of P.W.3 and others which were allegedly recorded on 16.02.2001, disbelieved the evidence of P.W.5. Apart from the same, though P.W.5 deposed that he recorded the statement of R.W.2, R.W.2 deposed that police never recorded his statement and that he never did contract work with the tractor-trailor in question and that he does not know the driver and owner of the said tractor. Noticing the same, the Tribunal came to the conclusion that the tractor-trailor in question was not involved in the accident and accordingly, dismissed the claim petition.

8. In **Dulcina Fernandes's** case (supra), the evidence of pillion rider was recorded seven years after accident. In such circumstances, the Apex Court held that failure or inability to examine pillion rider as a witness in case cannot be treated as fatal. But, in the instant case, P.Ws.3 and 4, who are eyewitnesses to the accident, though examined, due to contradictions in their depositions, the Tribunal did not disbelieve their evidence. Therefore, the said decision cannot help the appellants. In **Bodige Padma's** case (supra), the witnesses therein deposed that the truck in which he was travelling hit the motor cycle; that despite his request, the driver did not stop the truck and proceeded ahead; and that when the truck stopped, he noticed and remembered the number of truck. In those circumstances, the Apex Court held that the appellants-claimants therein established that the lorry in question was involved in the accident. But, in the present case, the depositions of the witnesses are not trustworthy and hence, the Tribunal disbelieved the same. Therefore, the said decision also cannot help the appellants. In **Vimla Devi's** case (supra), as the insurance company therein did not examine any witness to rebut the claimants' evidence, the Apex Court accepted the case of the claimants and awarded compensation. In the present case, the insurance company examined R.Ws.1 to 3, whose depositions are against to the claim of the appellants. Therefore, the said decision also cannot help the appellants.

9. Having regard to the facts and circumstances of the case, I am of the considered view that the appellants could not establish

that tractor-trailor bearing No.AP22T 4687/4688 involved in the accident. Therefore, I find no reason to interfere with the order of the Tribunal and the appeal is liable to be dismissed.

10. In the result, the Motor Accidents Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

T.AMARNATH GOUD, J

Date: 18-12-2019
TJMR

