

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.410 OF 2011

JUDGMENT:

This appeal is filed by the appellants-claimants aggrieved by the judgment and decree dated 24.02.2009 passed in O.P.No.24 of 2004 by the Motor Accident Claims Tribunal-cum-I Additional District Judge, Adilabad (for short, the Tribunal).

2. The brief facts of the case are that appellant No.1 is the wife, appellant Nos.2 and 3 are the children and appellant Nos.4 and 5 are the parents of the deceased, **Shanker**. On 26.04.2002 at about 7.30 pm., while the deceased was travelling in a jeep bearing No.AP1T 5451 to go to his village, and when the jeep reached Rajula Temple in Mekalagandi Area on National Highway No.7, the driver of the jeep drove it in a rash and negligent manner, due to which, the jeep turned turtle. In the said accident, the deceased sustained grievous injuries and he was shifted to Government Hospital, Adilabad, where he succumbed to injuries. The appellants filed the aforesaid OP against respondent Nos.1 and 2, owner and insurer of the jeep, respectively, claiming compensation of Rs.4,00,000/- for the death of the deceased.

3. Before the Tribunal, respondent No.1 filed counter denying the averments of the claim petition and contended that the accident had not occurred due to the rash and negligent driving of the driver of the jeep and that the appellants, in collusion with police, implicated respondent No.1 and his vehicle and sought to dismiss the claim petition. Respondent No.2 filed its counter stating that

an unknown lorry hit the jeep and the driver of the lorry is responsible for the accident and that the identity of the deceased is in dispute and sought to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of unknown lorry, but not the jeep and accordingly, dismissed the OP. Aggrieved by the said award, the appellants filed the present appeal.

5. Heard.

6. P.W.2, an eyewitness, deposed that he was travelling in the jeep from Adilabad to Utnoor, having boarded the same at 6.30 pm., at Adilabad and that due to rash and negligent driving of the driver of the jeep, it turned turtle at Mekalagandhi and two persons travelling in the jeep died and his right leg was cut in the accident. In the cross-examination, he denied the suggestion that a lorry was involved in the accident besides expressing his ignorance about the final report submitted by the police. R.W.1, the owner of the jeep, deposed that while the jeep was proceeding towards upside in a turning, a lorry coming in opposite direction towards down, hit the jeep and that there was no possibility for the jeep turning turtle while taking a turn in that place. As there were contradictory statements, the Tribunal believed the version of R.W.1 and came to the conclusion that the accident was occurred on account of the rash and negligent driving of the driver of unknown lorry is

probable and acceptable. Accordingly, the Tribunal decided issue No.1 that whether the deceased died due to rash and negligent driving of the driver of the jeep against the appellants. Insofar as issue No.2 that whether the appellants are entitled to any compensation is concerned, the Tribunal arrived at a total compensation of Rs.2 lakhs. However, the Tribunal held under issue No.3 that the appellants are not entitled to any compensation in view of the finding given on issue No.1. Accordingly, the Tribunal dismissed the claim petition.

7. On perusing the judgment of the Tribunal, it is evident that the Tribunal relied on the evidence of R.W.1 and did not take the evidence of P.W.2 into consideration and decided issue No.1 against the appellants. It is to be noted that when there is evidence of an eyewitness (P.W.2), the Tribunal ought to have examined the same by taking into consideration the other evidence led by the appellants, but the Tribunal, basing on the sole evidence of R.W.1, disbelieved the version of P.W.2 and decided issue No.1 against the appellants. In view of the above, this Court is of the opinion that the Tribunal has not properly appreciated the evidence on record and this is a fit case to remand the matter to the Tribunal for deciding the same afresh.

8. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed remanding the matter to the Tribunal for disposal afresh, as expeditiously as possible, by affording reasonable opportunity to

both sides. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 30.12.2019
TJMR

