THE HON'BNLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL No.4247 OF 2004

JUDGMENT:

This appeal is preferred by the appellant/insurance company questioning the Award of the Motor Vehicles Accidents Claims Tribunal (I Additional District Judge) at Warangal (for short, the Tribunal) in O.P.No.853 of 2001 dated 21.06.2002.

2. Appellant is respondent No.2, respondent Nos.1 to 7 are the claimants and respondent No.8 is respondent No.1 in MVOP.No.664 of 2009. For the sake of convenience, the parties are referred to as they are arrayed in MVOP.No.853 of 2001.

3. The brief facts of the case are that on the intervening night of 17/18.06.2000 at about 12.30 pm., while Narsaiah (hereinafter he is referred as 'the deceased') was going on his TVS Moped bearing No.AIO 2430 from Suraram towards Shapurnagar, on the way, a car bearing No.ADM 9292 came in a rash and negligent manner with high speed and hit the Moped, due to which, the deceased fell down and received grievous injuries. Immediately, he was shifted to Gandhi Hospital, and died on the same day while undergoing treatment. The claimants, who are wife, sons and daughters of the deceased, filed the aforesaid OP against the driver and

insurer of the car, seeking compensation of Rs.10,00,000/- for the death of the deceased.

4. Before the Tribunal, driver of the car remained *ex parte.* The insurance company filed counter denying the allegations in the OP and contended that the amount claimed is excessive and sought to dismiss the OP.

5. The Tribunal, basing on the pleadings, framed the following issues:

(i) Whether the accident took place on account of the rash and negligent driving of the car of the first respondent or due to the negligence on the part of the deceased resulting in his death?

(ii) What was the age and income of the deceased by the date of his death? Whether the petitioners are entitled for compensation? If so, to what amount and from whom?

(iii) To what relief?

6. Insofar as issue No.1 is concerned, basing on the contents of charge sheet, the Tribunal came to the conclusion that the accident occurred due to the negligent driving of the car by respondent No.1 and there was no negligence on the part of the deceased. Insofar as issue Nos.2 and 3 are concerned, the Tribunal taking into consideration the age and income of the deceased, awarded Rs.9,66,892/- with interest @ 9% per annum holding respondent Nos.1 and 2 are jointly and severally liable to pay the same, while rejecting the claim of claimant Nos.2 to 4, as they were employed by the date of

accident. Challenging the said order, respondent No.2-the insurance company, filed the present appeal.

7. Sri E.Venugopal Reddy, learned counsel for the appellant-insurance company, submits that the car in question was not involved in the accident and that the case was manipulated against the driver of the car after deliberations. He further submitted that admittedly, the deceased was hit by an unknown vehicle as is evident from Ex.A.1-FIR; that the police also did not identify the vehicle and filed the final report as unknown and that therefore, reopening of the case by the police after filing final report as unknown is only to claim the compensation from the insurance company. He further submits that P.W.2 is an eyewitness, who deposed that he saw the accident from a distance of 10 feet and he did not see the number of the car. Apart from the same, when the accident took place on 17/18.06.2000, the vehicle number was given on 02.12.2000 for the first time at a belated stage and hence, the claim of the claimants is a manipulated one and seeks to set aside the order of the Tribunal.

8. Sri Kota Subba Rao, learned counsel for the respondent Nos.1 to 7 herein/claimants, submits that car in question was very much involved in the accident which was detected in the police investigation. In FIR, the particulars of the vehicle were not mentioned because the complaint was lodged by

another person and hence, mere non-mentioning of the vehicle particulars is not a consequence. He further submits that though there is a delay in sending the FIR to the Court, but the First Information Report was given on the next day at 12.30 pm. In cases of this nature, one cannot find fault with the delay in lodging the report. In support of his arguments, he relied on decisions of this Court in **New India Assurance Co. Ltd. V. Anela Sathyamma**[1], **P.Suneela V. Shaik Kamal**[2], **National Insurance Co. Ltd., Khammam V. Shaik Yousuf Bee**[3], **Kunta Rajitha V. M.Jayapal Reddy**[4] and an unreported decision in MACMA.No.1785 of 2006 dated 28.10.2019.

9. In the similar circumstances, a Division Bench of this Court in **P.Suneela**'s case (supra), held that since the informant, who lodged the report, is not an eyewitness to the incident, his source of information is the information gathered from the scene, non-mentioning of the auto number cannot be found fault. In the present case, after the police filed final report on 30.09.2000, L.W.5 went to the police station on 02.12.2000 and stated that he witnessed the accident and noticed the driver of the offending car while proceeding from Suraram to Shapurnagar, driven in a rash and negligent manner in high speed and hit the TVS Moped.

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[1] 2015 ACJ 1352
[2] 2019 (2) ALD 390 (DB)
[3] 2013 (2) ALD 649
[4] 2012 (2) AL5 45

Thereafter, the police conducted investigation and traced out the crime vehicle and filed the charge sheet stating that respondent No.1 caused the accident. So, non-mentioning of the vehicle number in the First Information Report, cannot be given much weightage to doubt the case, more so, when the claimants have to prove their case on the touchstone of preponderance of probabilities.

10. Here it requires to be noticed is that the occurrence of accident and the involvement of the offending vehicle in a claim case under Section 166 of the Motor Vehicle Act need not be established by the claimants beyond reasonable doubt as is required for proof of the guilt of the accused in a criminal case by the prosecution. It is enough for the claimants to establish the involvement of the vehicle basing on preponderance of probabilities. Moreover, a summary procedure is contemplated for the Tribunals constituted under the Motor Vehicles Act to be followed in the enquiries in claim cases arising under the Act. The evidence let in should be summary in nature and the Tribunal need not follow the strict rules of evidence and it can adopt it's own procedure for conducting enquiries into the claims.

11. In the instant case, two factors assume importance. They are that the police after conducting thorough investigation found that the accident was caused due to rash and negligent driving of the offending vehicle by respondent

No.1 and he was charge-sheeted for the offence of causing death by rash and negligent driving. It is to be noted that no person comes to the police and confess that he caused the accident. Apart from the same, the appellant-insurance company, except stating that the car was not involved in the accident and that the case was manipulated against the driver of the car after deliberations, could not adduce any evidence to that effect.

12. In MACMA.No.1785 of 2006, dated 28.10.2019, this Court dealt with the similar issue and negatived the contentions of the insurance company therein by following the law laid down in **P.Suneela**'s case (supra). The facts in the said case squarely cover the facts of the present case. Therefore, I find no infirmity in the order of the Tribunal and hence, the appeal is liable to be dismissed.

13. Accordingly, the Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

T.AMARNATH GOUD, J

Date: 29.11.2019
TJMR