

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

+M.A.C.M.A. No.1564 OF 2006

% Delivered on: 06-02-2020

Between:

P. Lalitha & others .. Appellants

Vs.

\$ 1. M.A. Bari

2. M/s. Oriental Insurance Co.Ltd.,
Nizamabad Branch, Nizamabad. .. Respondents

! For Appellants : Mr. V. Ravi Kiran Rao

^ For Respondent No.2 : Mr. S. Agastya Sharma,

< Gist :

> Head Note :

? Cases Referred :

¹. 2012 (5) ALT 559

THE HON'BLE SRI JUSTICE K. LAKSHMAN**M.A.C.M.A. No.1564 OF 2006****JUDGMENT:**

Feeling aggrieved by the judgment and decree dated 16.03.2006 in O.P. No.289 of 2002 passed by the Motor Accidents Claims Tribunal - cum - District Judge, Nizamabad (for short 'the Tribunal'), the petitioners preferred the present appeal.

2. Vide the aforesaid judgment the Tribunal dismissed the claim petition filed by the appellants - petitioners against respondent Nos.1 and 2, owner and insurer of lorry bearing registration No.AP-25/T 4645, seeking compensation of Rs.10,00,000/- on account of death of Rajender Kumar.

3. Heard Mr. V. Ravi Kiran Rao, learned counsel for the appellants - petitioners and Mr. S. Agastya Sharma, learned counsel for respondent No.2 - Insurer. It is relevant to note that the above appeal was dismissed for default by this Court vide order dated 29.06.2016 against respondent No.1.

4. According to the appellants - petitioners, on 22.11.2000, P. Rajender Kumar, after meeting his parents in Bodhan and thereafter his friend in Sadasivnagar village at about 10.00 p.m. while he was waiting for private buses to go to Hyderabad from Sadasivnagar village, lorry bearing registration No.AP - 25T- 4645 driven by its driver in a rash and negligent driving and at high speed came and

dashed him, due to which, he died. The deceased was aged 29 years and earning an amount of Rs.8,000/- per month by working as an Engineer. On account of death of deceased, the appellants, who are wife, son, parents and brother lost dependency. Thus, they laid a claim under Section 166 of the Motor Vehicles Act, 1988 seeking a compensation of Rs.10.00 lakhs against respondent Nos.1 and 2, who are owner and insurer of the above said lorry.

5. Respondent No.1, owner of the lorry, remained *ex parte* before the Tribunal.

6. Respondent No.2 - Insurer of the lorry filed its written statement denying the claim made by the appellants. According to respondent No.2, in Ex.A-1 - FIR, vehicle number was not mentioned. The police after conducting investigation filed final report closing the FIR on the ground 'undetected'. It further contended that after lapse of one year, the appellants hatched a plan with the help of PW.2 and police and planted the said vehicle/lorry bearing No.AP-25/T-4645 taking advantage of mentioning the word "lorry" in FIR. It further contended that the said lorry is not the vehicle which involved in the alleged accident and the appellants with the help of PW.2, driver of the vehicle and police with an intention to claim compensation from respondent No.2 - Insurer, filed the above claim petition by creating documents and thus it is not liable to pay any compensation to the appellants and accordingly prayed for dismissal of the claim petition against it.

7. On the analysis of the entire evidence, both oral and documentary, the Tribunal dismissed the said claim petition (O.P. No.289 of 2002) on the ground that the appellants - petitioners failed to prove the involvement of the vehicle of respondent No.1 in the accident and, therefore, they are not entitled for any compensation under the provisions of the Act.

8. On perusal of the entire record including Exs.A1 - FIR, A4 - charge sheet, B1- investigation report, B2 - statement of PW.2 under Section 161 of Cr.P.C., B3 - deposition of PW.2 in criminal case etc., it is not in dispute that the deceased died in an accident. In Ex.A1 - FIR, vehicle number is not mentioned and it is only mentioned as "LORRY". Admittedly, the said FIR was closed by the police and they have filed a final report closing the FIR on the ground 'UNDETECTED'. PW.2 - T. Purnachander Rao, who is claiming that he knows the deceased family and that father of deceased and himself are colleagues in NSF Factory, Shakkernagar, Bodhan and that they are residing in NSF Colony, deposed that he was also traveling in the vehicle which dashed the deceased. Admittedly, Ex.A1 - FIR was registered on the complaint given by one Mr. Kakkerla Raghu Shetty. In the said FIR, number of the vehicle is not mentioned and it is only mentioned as 'lorry'. It is also relevant to note that the police closed the FIR and filed final report on the ground 'undetected'.

9. In Ex.A4 - charge sheet, it is mentioned that though the police had closed Ex.A1 - FIR and filed final report on the ground 'undetected', but they have reopened the case on the ground that the driver - Musafir surrendered before the police on 06.11.2001. It is relevant to note that the date is kept blank and later it was written as '6-11-2001'. As per Ex.A4 - charge sheet, on 06.11.2001, the driver of the lorry surrendered before the Investigating Officer and disclosed his identity and voluntarily confessed to have committed the offence. Ex.A4 also discloses the fact that the Investigating Officer arrested the driver of the lorry and since the said offence is bailable, he was enlarged on bail in the police station itself. Ex.A4 further discloses the fact that after almost one year of the accident, the driver of the lorry surrendered before the police, Sadasivnagar voluntarily and confessed to have committed the offence.

10. PW.2 deposed that he was also travelling in the accident lorry on the date of accident and that he was colleague of deceased father who is also residing in his colony i.e., NSF Colony, Bodhan. But, he was silent for almost for one year and it is not his case that he is not aware of the death of the deceased. Hence, the silence on the part of PW.2 for almost one year creates suspicion. Admittedly, the accident took place at Sadasivnagar which is nearly more than 60 kilometers from NSF Colony, Bodhan, where the deceased and his family were residing. Admittedly, PW.2 is not a stranger to the deceased and his family. PW.2 is colleague of the deceased father and

residing in the very same colony. The statements of PW.2 and one Gopal, who was cited as LW.7, would show that the deceased received injuries in the accident and thereafter he died. But, they have not given any complaint to the police either immediately after accident or subsequently. As per Ex.A4 - charge sheet, almost after one year, that too closure of Ex.A1-FIR on the ground 'undetected', driver of the accident vehicle surrendered before the police on 06.11.2001 and voluntarily confessed to have committed the offence. So, surrendering of driver as well as maintaining silence by PW.2 for almost one year gives suspicion over the involvement of lorry bearing No.AP 25T 4645 in the alleged accident. As per the evidence of PW.2, he is none other than colleague of father of the deceased, more particularly, residing in the very same colony where the deceased family resides. According to him, he was traveling in the accident vehicle on the date of accident. Thus, PW.2 kept quiet for almost one year and thereafter coming forward and deposing in the above manner stated supra.

11. It appears from Exs.A1 and A4 - FIR and charge sheet, the police without investigating the matter properly, accepted the confession of the driver of the lorry, that too after one year and without conducting further investigation accepted the surrender and released the driver on bail on the ground that the offence said to have committed is bailable one. The only explanation given by the appellants - petitioners for the said delay is that they made efforts to

detect the crime vehicle and that the driver of the vehicle was traced out only after a quite long time, as such, after examination of wife of the deceased, LW.6 (PW.2), LW.7 - Mr. Gopal and LW.8 - Mr. M.A. Bari, the police filed charge sheet.

12. In view of the above said discussion, more particularly, the conduct of PW.2 is highly suspicious. Therefore, his evidence is unbelievable and untrustworthy. The Tribunal on the analysis of the entire evidence, both oral and documentary, gave a finding to the effect that the appellants failed to prove the involvement of the vehicle of respondent No.1 in the accident and that they are not entitled for any compensation.

13. The learned counsel for the appellants by referring the principle held by this Court in **Bodige Padma v. Makula Shanker**¹, would contend that the delay in lodging complaint is not fatal to claim compensation. In fact, in the said case, the accident had occurred on 01.02.1997, and report was lodged on the next day i.e., 02.02.1997. The number of the offending vehicle was not mentioned in the FIR since the complainant of the FIR was in a precarious condition and was not in a position to note down the number of the offending lorry. This Court, considering the said facts, held that the finding recorded by the Tribunal with regard to the delay in filing the charge sheet and denying the compensation is erroneous. This Court further held that FIR need not contain all the details relating to the occurrence of the

¹. 2012 (5) ALT 559

accident and names of the eye-witnesses. A summary procedure was contemplated to evaluate the evidence of the witnesses in claim cases under Motor Vehicles Act. The factum of accident need not be proved in claim cases by the standard of beyond reasonable doubt. The Tribunal has to take a broad and comprehensive view of the matter and the claimants are not required to prove each and every fact relating to the occurrence of the accident meticulously.

14. But, the facts and circumstances in the present case are altogether different. In the said case, though the accident had occurred on 01.02.1997, the complaint was lodged on the next day i.e., 02.02.1997. Number of the vehicle was also not mentioned in the FIR. In the case on hand, the accident took place on 22.11.2000 at about 10.30 p.m. and on the next day i.e., 23.11.2000 complaint was lodged and the same was registered on the same day at 7.00 a.m. In the said complaint, number of the vehicle was not mentioned. Thereafter, the police closed the said FIR by way of filing final report on the ground 'undetected'. PW.2, who claimed to be the passenger of the accident lorry, colleague of the father of the deceased and residing in the same colony, kept quiet for almost one year. The police reopened the case only when the driver of the lorry surrendered himself before the police after one year and voluntarily confessed to have committed the offence. The police without investigating the entire issue properly filed Ex.A4 - charge sheet. As already discussed above, the silence on the part of PW.2, LW.7 - Mr. Gopal and LW.8 -

Mr. M.A. Bari, more particularly on the part of PW.2 gives suspicion and his evidence is unbelievable and not trustworthy. The said principle held by this Court in the aforesaid decision is not applicable to the facts of the case on hand.

15. In view of the aforesaid discussion, the Tribunal on the analysis of the entire evidence rightly held that the appellants - petitioners failed to prove the involvement of the vehicle of respondent No.1 in the alleged accident and, as such, they are not entitled for any compensation. Thus, this Court is satisfied with the findings recorded by the Tribunal on the said aspects and accordingly the appeal is devoid of merits and the same is liable to be dismissed.

16. In the result, the appeal is dismissed confirming the judgment and decree dated 16.03.2006 in O.P. No.289 of 2002 passed by the Tribunal. However, there shall be no order as to costs.

As a sequel, Miscellaneous Applications, if any, pending in the appeal shall stand closed.

K. LAKSHMAN, J

06th February, 2020

Note:

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(B/O) Mgr