

THE HON'BLE SRI JUSTICE PULLA KARTHIK

M.A.C.MA. No.1932 of 2007

JUDGMENT:

This Motor Accidents Civil Miscellaneous Appeal is filed by the claimants against the dismissal order passed in MVOP No.220/2004 dated 19.04.2007 on the file of III Motor Accidents Claims Tribunal, Warangal, wherein the Tribunal had dismissed the claim petition.

2. The case of the appellant in brief:

On 16.06.2003, the deceased who was doing petty business and earning Rs.6,000/- per month, came over to Hanamkonda on personal work and was returning back on a motor cycle No. ABD 3804 of a known person, when they reached to Hasanparthy at about 2.30 PM near Vijaya tent house, Bheemaram, a tractor and trailer bearing No. AP 36 U 7555 and 7556 driven by T.Someshwar Rao in a rash and negligent manner, without blowing horn, hit the motor bike, causing the accident, due to which, the deceased Rajamma and Ashok fall on the road and since the driver

of the said tractor could not control the same, it ran over their bodies due to which Rajamma sustained internal and external grievous injuries.

3. It is pleaded that since her husband has neglected her, the deceased was doing petty business and maintaining her minor son and due to sudden demise, he lost his mother apart from her love and affection, guidance maintenance etc. and became orphans and the deceased was 35 years old.

4. The respondent No.1 remained exparte before the Tribunal.

5. Respondent No.2 and 3 filed common counter denying the allegations and narration made and disputed the relation between the petitioner and the deceased and prayed to dismiss the petition.

6. Basing on the above pleadings, the following issues have been settled for trial:

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1. Whether the accident that occurred on 16.6.2003 was due to rash and negligent act of the driver of the tractor trailer bearing No. AP 36 U 7555 and 7556 resulting in death of the deceased B.Rajamma?

2. Whether the petitioner is entitled to compensation? If so, to what amount and from which of the respondents?

3. To what relief?

7. On behalf of the appellant PWs 1 to 5 were examined and Exs A1 to A7 were marked. On behalf of respondent No.2 and 3 copy of policy was marked as Ex.B1. No oral evidence was adduced on their side.

8. Heard both sides and perused the record.

9. The appellant contends that the Tribunal erred in dismissing the petition on flimsy grounds and further contended that the Tribunal ought to have considered the facts of the deceased Rajamma who left behind her only son as she had been deserted by her husband long back

and above facts have been proved by PW1 i.e. second appellant herein. It is further contended that the Tribunal failed to consider the evidence of PW1 to 5 and documents Ex.A1 to A7. It is further contended that the Tribunal failed to appreciate that there was no rebuttal evidence adduced by respondent No.2 and 3 to disbelieve the evidence on record adduced on behalf of the appellant herein. As such, the conclusion arrived in dismissing the OP is contrary to law.

10. In contra, the counsel for respondent contends that the Tribunal had dismissed the petition basing on the oral and documentary evidence. It is further contended that there is no error in the order of the Tribunal and requested to dismiss the appeal.

11. This court has taken note of the submissions made by the respective parties.

12. According to PW1 i.e. brother of the deceased, the second appellant deserted the deceased and his

whereabouts are not known since long and it is deposed that the deceased was 33 years and was doing petty business and was earning Rs.3,000/- per month. According to PW5, who is the 2nd appellant herein the first appellant is his son and the deceased was his wife and they begot the first petitioner 14 years back and about 10 years back due to differences with Rajamma i.e. the deceased left his house with first petitioner and went to her mother's village, then shifted to Hanamkonda town and ultimately settled in Bheemaram and used to run petty business. In the cross examination he stated that he came to know the death of Rajamma two years back. Her marriage took place about 10 years back and he deposed that he had no identity card, ration card or marriage photo to show that he married the deceased Rajamma. He further deposed that she deserted him three years after the marriage and he is living in Ramakrishnapuram of Chityal mandal. He further deposed that she did not marry any other person. In the cross examination he denied that she married one Narsimha Ramulu and the petitioner is not

their son. As per Ex.A1/FIR shows that the name of the husband as Narsimha Ramulu in Ex.A2 post mortem report, the name of the husband of the deceased is not mentioned and the inquest panchnama is not filed by the petitioner which is mandatory as held by the Tribunal. Thus, the documentary evidence shows that the husband of the deceased is not the second petitioner but one Narsimha Ramulu. Similarly the first petitioner is not proved to be the son of the Rajamma. Therefore, the Tribunal had justified in dismissing the petition on the ground that the appellant failed to prove that first petitioner is son of the deceased and second petitioner is husband of deceased.

13. In view of the above, this court does not find any merit in the appeal. Hence the appeal is liable to be dismissed.

14. Accordingly the appeal is dismissed. There is no order as to costs.

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Pending miscellaneous petitions, if any, in this
MACMA shall stand closed.

JUSTICE PULLA KARTHIK

Date: 03.01.2023
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