

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

**FRIDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL 251 2017

Appeal filed Under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree in O.P.No.321 of 2011 dated.21.10.2016 on the file of the Court of the Chairman, Motor Accident Claims Tribunal-cum- III Additional District Judge, Asifabad.

Between:

1. Kondaboina Odemma, W/o. Late Kondaboina Lingaiah, Age 51 years, Occ Household,
2. Kondaboina Prasanth, S/o. Late Kondaboina Lingaiah, Age 28 years, Occ Student,
3. Kondaboina Srikanth, S/o. Late Kondaboina Lingaiah, Age 25 years, Occ Student, All are R/o. Sangamallaiah Palle, Mancheria Mandal, Presently residing at H.No.2-55, New Kummariwada, Post Adilabad, Adilabad District.

...Appellants/Petitioners

AND

1. Kondavena Ashok, S/o. Lingaiah, Age Major, Occ Owner of Motor Cycle (Hero Honda Splendor), R/o. H.No.15-53/1, Sangamllaiahpally, CCC Naspur, Mancheria Mandal, Adilabad District.
2. National Insurance Company Ltd., Rep. by its Branch Manager, Branch Office, H.No.15-531/1, Sangamallaiahpally, CCC Naspur, Mancheria Mandal, Adilabad District.

...Respondents/Respondents

Counsel for the Appellants : Sri S Surender Reddy

Counsel for the Respondent No.2 : Ms. I Maamu Vani

The Court delivered the following: Judgment

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

M.A.C.M.A.NO.251 OF 2017

JUDGMENT:

Heard Sri S.Surender Reddy, learned counsel for appellants/petitioners and Smt. I.Manu Vani, learned counsel for respondent no.2-Insurance company.

2. The present appeal has been filed by the appellants/petitioners aggrieved by the order passed by the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Asifabad, (for short, 'Tribunal') in O.P.No.321 of 2011, dated 21.10.2016, wherein and whereby, the Tribunal dismissed the claim petition.

3. Appellants herein are the petitioners/claimants, respondent no.1 herein is the respondent no.1-owner of the crime vehicle and respondent no.2 herein is the respondent no.2-insurance company before the Tribunal. For convenience, the parties hereinafter are referred to as they are arrayed before the Tribunal.

4. The brief factual matrix of the present appeal is as under.

4.1. On 10.11.2010 at about 4.00 p.m., when K.Lingaiah (hereinafter referred to deceased) was proceeding on Hero Honda motorcycle bearing registration No.AP-15-TO T/R. 7332 to attend his work from Sanghamallaiah to Mancherial and when he reached near Medariwada, Macherial, he was unable to control the vehicle and fell down and as a result, he sustained injuries on throat and other parts of the body. Immediately, he was shifted to Government Hospital, Mancherial; from there, he was shifted to Bhadrakali Hospital, Karimnagar, and again admitted in Poulomi Hospital, Secunderabad, where he was treated as inpatient from 11.11.2010 to 15.12.2010 and finally, he was admitted in Singareni Area Hospital, Ramakrishnapur and while undergoing treatment he succumbed to injuries on 19.12.2010.

4.2. Initially, petitioners filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act, 1988) before the Tribunal claiming compensation of Rs.25,00,000/-. Subsequently,

Section of law was altered from Section 166 to Section 163-A of the Act, 1988.

4.3. It was contended that the deceased was working as Supportman at Ravindrakhani No.5 incline of Singareni Collieries Company Limited and was earning Rs.24,767/- per month; that petitioners spent Rs.7,00,000/- towards treatment of the deceased and due to death of the deceased, petitioners suffered shock and lost love and affection and earnings of deceased.

5. Respondent no.1, who is none other than the son of the deceased and owner of the crime vehicle, remained *ex parte*.

6. The respondent no.2-insurance company filed counter denying the manner of accident, age, avocation and income of the deceased and further contended that accident had occurred due to rash and negligent riding of motorcycle by the deceased himself and therefore, claim of the petitioners is not maintainable and finally, prayed to dismiss the claim petition.

7. On the basis of the above pleadings, the Tribunal framed the following issues:

1) Whether the accident occurred on 10.11.2010 at about 16.00 hours on account of rash and negligent driving of Hero Honda motor cycle AP-15-TO T/R-7332, Chassis No.MBL-HA10EYAHK-22686 by its driver?

2. Whether the petitioners are entitled to any compensation and if so to what amount and from whom?

3) To what relief ?

8. In order to substantiate the case, on behalf of the petitioners, 1st petitioner himself was examined as PW.1 and got marked Exs.P1 to P14. On behalf of respondent no.2-insurance company, RW.1 was examined and Exs.B1 to B9 were marked.

9. The Tribunal, on due consideration of oral evidence and material placed on record, has come to conclusion that the accident was caused due to rash and negligent riding of motor cycle by the deceased himself and accordingly, dismissed the claim ¹petition.

/

10. During the course of hearing of the appeal, learned counsel for petitioners, while reiterating the averments made in the claim petition, submitted that the Tribunal, without appreciating the evidence and material placed on record, dismissed the total claim petition of the petitioners. He submitted that in a claim petition under Section 163-A of the Act, 1988, there is no need to prove that the death was caused due to any negligence, however, without considering the same, the Tribunal dismissed claim petition. He further contended that as M.V.Act is a welfare legislation, the Tribunal ought to have awarded the compensation as claimed by the petitioners and finally, prayed to allow the appeal by setting aside the impugned order and award just compensation.

11. *Per contra*, the learned counsel for respondent no.2/ insurance company submitted that the Tribunal, on due consideration of evidence, material placed on record, had rightly dismissed the O.P. She further submitted that the appeal is devoid

of any merit and the appellant failed to make out any case warranting this Court to interfere with the impugned order passed by the Tribunal and finally, prayed to dismiss the appeal.

Consideration :

12. The short question that arises for consideration is whether the claim petition under Section 163-A of the Act, 1988 is maintainable or not ?

13. In a claim under Section 163-A of the Act, 1988, deceased/ victim has to be a third party in relation to vehicle in question. In the instant case, the vehicle was borrowed by the deceased from respondent no.1, who is none other than his son, for his personal use to attend his work from Sanghamallaiah to Mancherial and in the said process, the deceased lost control over the motorcycle and fell down and sustained injuries and later succumbed to injuries, which is evident from the pleadings of the claim petition. From the perusal of record, it appears that accident was caused

due to rash and negligence driving of the motorcycle by the deceased himself alone and he is not a third party in relation to the vehicle in question. As per Section 163-A of the Act, 1988, when the deceased is not a third party in the accident, the legal heirs of the deceased cannot claim compensation from the owner of the vehicle or the insurer of the said vehicle.

14. In view of the above discussion, the claim petition under Section 163-A of the Act, 1988 is not maintainable, without third-party involvement when deceased was driving the vehicle. In considered opinion of this Court, the Tribunal, on considering the oral as well as documentary evidence and legal position, was justified in dismissing the claim petition and the appellants failed to make out any case warranting interference by this Court. Therefore, this Court is not inclined to interfere with a reasoned award passed by the Tribunal.

15. Accordingly, this Appeal is dismissed. There shall be no order as to costs.

Pending miscellaneous applications if any shall stand closed.

SD/-P.PADMANABHA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Chairman, Motor Accident Claims Tribunal-cum- III Additional District Judge, Asifabad(With records)
2. One CC to Sri S Surender Reddy, Advocate [OPUC]
3. One CC to Ms. I Maamu Vani, Advocate [OPUC]
4. Two CD Copies

ADK

Pr

HIGH COURT

DATED:20/09/2024



JUDGMENT

**(2 DRAFTS)
+ (DECREE)**

MACMA.No.251 of 2017

**DISMISSING THE MACMA
WITHOUT COSTS**

*Grapples
for
12/12/24*

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

FRIDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL 251 2017

Between:

1. Kondaboina Odemma, W/o. Late Kondaboina Lingaiah, Age 51 years, Occ Household,
2. Kondaboina Prasanth, S/o. Late Kondaboina Lingaiah, Age 28 years, Occ Student,
3. Kondaboina Srikanth, S/o. Late Kondaboina Lingaiah, Age 25 years, Occ Student, All are R/o. Sangamllaiah Palle, Mancheria Mandal. Presently residing at H.No.2-55, New Kummariwada, Post Adilabad, Adilabad District.

...Appellants/Petitioners

AND

1. Kondavena Ashok, S/o. Lingaiah, Age Major, Occ Owner of Motor Cycle (Hero Honda Splendor), R/o. H.No.15-53/1, Sangamllaiahpally, CCC Naspur, Mancheria Mandal, Adilabad District.
2. National Insurance Company Ltd., Rep. by its Branch Manager, Branch Office, H.No.15-531/1, Sangamllaiahpally, CCC Naspur, Mancheria Mandal, Adilabad District.

...Respondents/Respondents

Appeal filed Under Section 173 of Motor Vehicles Act,1988 against the Judgment and decree in O.P.No.321 of 2011 dated.21.10.2016 on the file of the Court of the Chairman, Motor Accident Claims Tribunal-cum- III Additional District Judge, Asifabad.

This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Lower Court and the material papers in the Case and upon hearing the arguments of Sri S Surender Reddy, Advocate for the Appellants and of Ms. I Maamu Vani, Advocate for the Respondent No.2 and none appeared for the respondent No.1.

This Court doth Order and Decree as follows:

1. That the Motor Accident Civil Miscellaneous Appeal be and hereby is dismissed;
2. That there shall be no order as to costs in this appeal.

SD/-P.PADMANABHA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Chairman, Motor Accident Claims Tribunal-cum- III Additional District Judge, Asifabad(With records)
2. Two CD Copies

ADK

fr

HIGH COURT

DATED:20/09/2024

DECREE

MACMA.No.251 of 2017

DISMISSING THE MACMA
WITHOUT COSTS

4 copies
fr
21/11/24