



IN THE HIGH COURT OF ANDHRA PRADESH

AT AMARAVATI

[3311]

(Special Original Jurisdiction)

Saturday, the thirty first day of January two thousand and twenty six

Present

The Honourable Ms. Justice B. S. Bhanumathi

Civil Miscellaneous Appeal No.2822 of 2003

Between:

T.Siromani and another

...Appellants

and

S. Mahaboob Saheb and Others

...Respondents

Counsel for the appellants:

1.Aravala Rama Rao

Counsel for the respondents:

1.T. V. Sri Devi

2.Sri T.Ravi Teja, learned counsel representing

Ms.A. Jayanthi, learned counsel

The Court made the following:

JUDGMENT:

This is an appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and the decree, dated 25.04.2003, in M.V.O.P.No.03 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Kurnool at Nandyal.

2. The appellants are the claimants and the respondents are the respondents before the Tribunal.

3. Since the claim against the respondents Nos.2, 4 and 5 was dismissed before the Tribunal, the respondents Nos.4 and 5 are shown as not necessary parties to this appeal, however the respondent No.2 is still shown as party to the appeal.

a. Notices sent to the respondents Nos.1 and 2 were returned unserved, though they were addressed to the address given before the Tribunal. Hence, it is treated as sufficient service of notice. Moreover, further notice is dispensed with as per proviso to Order XLI, Rule 14(1) of C.P.C. as applicable to the State of Andhra Pradesh, as they remained *ex parte* before the Tribunal.

4. The case of the claimants, is briefly, as follows:

a. The respondent No.1 is the owner, the respondent No.2 is the driver and the respondent No.3 is the insurer of the lorry bearing No.APD 6498. The respondent No.4 is the insurer and the respondent No.5 is the owner of moped bearing No.AP 21 C 8835.

b. On 17.05.1988, at about 12.30 AM, T.George who is husband of the claimant No.1 and father of the claimant No.2 while going on a moped bearing No.AP 21 C 8835, hit the rear side of the lorry bearing No.APD 6498 which was negligently parked in the middle of the road

without keeping any warning or lights on National Highway-18 near Sugali Metta Village. As a result, he sustained fatal injuries and died on the spot. The deceased was an employee in Panyam Cement Company and drawing salary of Rs.6,572/- per month. He was aged about 50 years. Therefore, the claimants sought compensation of Rs.5,00,000/-.

5. The respondents Nos.1, 2 and 5 remained *ex parte* before the Tribunal.

6. The respondent No.3 i.e., the insurer of the lorry filed counter resisting the claim stating that the lorry was taking a load of paddy and that a Jeep bearing No.AP 21 T 2947 was stationed on the road for want of diesel; that the respondent No.2 along with cleaner of the lorry, was engaged in taking out diesel from the lorry; that while so, the deceased himself negligently drove his moped in a drunken condition and was unable to control himself and hit the stationed lorry on its rear side and therefore, he died on his own negligence and that the amount of compensation claimed is excessive.

7. The respondent No.4 filed a counter contending that there was no negligence of the driver of the lorry in causing the death and that the deceased himself was negligent in driving the moped in a drunken condition and that the deceased is not a third party to make any claim against the respondent No.4 for negligence of the deceased and that the claim is excessive.

8. The claimant No.1 was examined as P.W.1 and Ex.A1 to A5 were marked on behalf of the claimants. On behalf of the respondents R.W.1 to R.W.3 were examined and Ex.B1 to B12 were marked.

9. K.Satya Raju, cleaner of the lorry was examined as P.W.2. His evidence is significant on the question of negligence. He stated that

parking lights of the lorry were not on and that both the jeep and the lorry had blocked the road and therefore the deceased coming on the moped dashed against the lorry from behind and died.

b. After discussing facts of the case, the Tribunal opined that P.W.2 could not withstand the test of cross-examination and that he had come to Court to give evidence at the instance of the claimant No.1 / P.W.1, who requested him to give evidence in favour of the claimants and further P.W.2 deposed that he did not know the name of the driver of the lorry and that he had not given any statement before the police. Therefore, the Tribunal suspected the trustworthiness of his evidence. Further, the Tribunal recorded that evidence of P.W.2 is inconsistent with the documentary evidence produced by the claimants, because Ex.A1 and A2 shows that the deceased was in a drunken condition at the time of the accident and died of his own negligence.

c. The Tribunal further recorded that P.W.1 admitted in her evidence that she had not given any complaint to the police or Magistrate to enquire into the matter. But, a case was registered against the deceased for the offence under Section 304 I.P.C. as can be seen from Ex.A1 and the case was abated. Thus, the Tribunal had concluded that the accident was not caused due to negligence of the driver of the lorry. Since there was no defect in the mechanism of the moped, the respondents Nos.4 and 5 are not necessary parties to the petition as per the opinion of the Tribunal. However, the Assistant Divisional Manager of the respondent No.4 has been examined as R.W.3 denying liability.

d. In the light of the above findings, the Tribunal declined to award the compensation on the ground of fault liability under Section 166 of the Motor Vehicles Act, 1988 and limited the amount of compensation

under 'no fault liability' by awarding Rs.50,000/-. The Tribunal further allowed costs and interest @ 9% per annum from the date of petition till date of realization on the amount of Rs.50,000/-. The amount was directed to be paid by the respondents Nos.1 and 3. The claim petition against the respondents Nos.2, 4 and 5 was dismissed without costs.

10. Aggrieved by the decree and the award, this appeal was filed by the claimants contending that the Tribunal grossly erred in awarding compensation only on no fault liability in spite of fault liability and that there is evidence of parking the lorry negligently in the middle of the road without switching on parking lights and that the Tribunal erroneously rejected the evidence of P.W.2. It is also contended that the Tribunal ought to have observed that the police falsely implicated the deceased in the crime with a view to help the driver of the lorry and that they are entitled to whole amount of claim of Rs.5,00,000/- as compensation.

11. Since there is no denial of the death of the deceased in the accident caused when the moped hit the rear side of the stationed lorry, no further discussion is required on that aspect but, as the respondents blamed the deceased for his negligence in causing the accident because he was drunk at that time, the evidence was examined by the Tribunal on that aspect.

12. The learned counsel for the appellants contended that the evidence of P.W.2 who is the cleaner of the lorry clearly speaks of the negligence of the driver of the lorry in parking the vehicle in the middle of the road without lights on, but the Tribunal erroneously rejected his evidence. He further submitted that undue importance has been attached to the evidence of R.W.2 who was the driver of the jeep and the evidence under documents filed in criminal case, marked here as

Exs.B1 to B.10; that the fact that the deceased was in drunken state had not been independently established by adducing clear evidence by the respondents; that even if the claimants failed to establish rash and negligence of the driver of the lorry, the Tribunal ought to have awarded compensation under Section 163-A of the Motor Vehicles Act, 1988, since the Act is a beneficial legislation; and that the evidence of P.W.2 clearly demonstrated that the road was completely blocked by the lorry and jeep and the lights of the jeep were on, whereas the lights of the lorry were not on and therefore, the accident occurred but the Tribunal committed error in disbelieving his evidence on extraneous grounds.

13. The learned counsel for the respondent No.3 / insurance company submitted that the Tribunal already awarded compensation under no fault liability and no further compensation is required to be allowed. He further submitted that the Tribunal considered the evidence of P.W.2 not only in chief examination which is relied on by the appellants, but also his evidence in cross examination and had given a categorical finding that the evidence of P.W.2 is not trustworthy. He further submitted that P.W.2 had not given any statement to the police as admitted by him in the cross examination.

14. Heard the learned counsel for the appellants and the learned counsel for the respondent No.3 represented by Sri T.Ravi Teja, learned counsel.

15. A perusal of the evidence shows that the reasoning given by the Tribunal to disbelieve the evidence of P.W.2 is correct. Since the deceased himself was at fault, the Tribunal awarded compensation on the ground of 'no fault liability'. Hence, this Court is not inclined to interfere with the decree and the award of the Tribunal.

16. In the result, the appeal is dismissed.

There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

Dt. 31.01.2026
NSM / PNV / RAR

B.S. BHANUMATHI, J