

(2006) 06 AP CK 0072
In the Andhra Pradesh High Court
Case No : CMA No. 1668 of 2004

D. Venkata Lakshmmamma and Others	APPELLANT
Vs	
M.P. Subbarayudu and Another	RESPONDENT

Date of Decision : 19-06-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 166(3)

Citation : (2006) 5 ALD 271

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : C. Prakash Reddy, for the Appellant; I. Maamu Vani, SC for OICL for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The claimants in O.P. No. 269 of 1998 on the file of the Chairman, Motor Accident Claims Tribunal-cum-Additional District Judge, Anantapur, filed this civil miscellaneous appeal, aggrieved by the order, dated 31-3-2004, dismissing their claim.

2. One Sri D. Venkata Naidu, the husband of first appellant and father of appellants 2 and 3, were travelling in an auto rickshaw bearing No. AP-12/790 on 20-11-1992 from R.S. Puram to Gooty. The auto was hit by a Tractor with Trailer bearing Nos. ATA 9304 and 9305. The Tractor was owned by the first respondent and was insured with the second respondent. In the accident, Mr. D. Venkata Naidu is said to have received multiple injuries and that he has undergone treatment at various hospitals at Gooty, Ananthapur and Bangalore. He ultimately, died on 6-12-1993. The O.P, was presented in 1998. A sum of Rs. 5,00,000/- was claimed as compensation. It was pleaded that for the prolonged treatment of Mr. D. Venkata Naidu over a period of one year, a sum of Rs. 2,50,000/-was spent.

3. The first respondent remained exparte. The second respondent, insurance

company, alone resisted the claim on several grounds ranging from absence of any negligence on the part of the driver of the Tractor and Tractor to the grounds of limitation. Through its order under appeal, the Tribunal found that the accident resulting in injuries to Mr. D. Venkata Naidu, had occurred on account of rash and negligent driving of the driver of the Tractor and Tractor. However, it dismissed the claim on the ground that the claim petition is barred by limitation. The same is challenged in this appeal.

4. Sri C. Prakash Reddy, learned Counsel for the appellants submits that with the deletion of Sub-section (3) of Section 166 of the Motor Vehicles Act (for short "the Act"), the question of limitation virtually pales into insignificance and that there was no justification for the Tribunal in dismissing the claim. He further contends that though the deceased died one year subsequent to the accident, the death was caused only on account of the accident and the prolonged ailment arising out of it.

5. Mrs. I. Mammu Vani, learned Counsel for the second respondent, on the other hand, submits that there is not even a remote connection between the accident on the one hand and death of the deceased on the other, and that the evidence on record did not support the claim of the appellants. She further submits that though not on strict principles of limitation, the O.P. can be said to have been barred by laches and that no explanation was forthcoming as to such delayed submission of the claim.

6. The Tribunal dismissed the claim of the appellants herein on two grounds namely, that they failed to prove that the accident and the injuries received therein are the cause of the death of late Venkata Naidu, and that the O.P. was barred by limitation. Taking the second aspect as first it needs to be observed that the Parliament felt that the stipulation of limitation for submission of claims under the Act had resulted in denial of benefit of the social security measure to many victims. Sub-section (3) of Section 166 of the Act, which provided for limitation, was deleted with effect from 14-11-1994. In the instant case, the accident occurred on 20-11-1992 and the deceased died on 6-12-1993. If one goes by the normal sequence of events, the benefit of deletion of Sub-section (3) of Section 166 of the Act cannot be extended to the appellants herein. However, this aspect of the matter is no longer in doubt.

7. In *Bharat Scarp Vs. Haryana and Steel Centre and Others*, , the Supreme Court held that the amendment to Section 166 of the Act, is retrospective in its operation and the claims that arose even prior to the said amendment, are governed by it. The result would be that the accidents in respect of which no claim petitions have been filed by 14-11-1994 are also governed by the amendment and they can be presented without any requirement as to its limitation. Therefore, the view taken by the Tribunal in this regard cannot be sustained.

8. The second aspect is about the cause of the death of the deceased. The

prolonged treatment from the date of accident till the date of death is certainly a factor that would throw light upon the issue. However, the evidence of a Medical Practitioner, who is acquainted with the kind of injuries, nature of treatment and their proximity to the death, would have been of great help to the Tribunal. The appellants did not choose to examine any Medical Practitioner in support of their claim. The extent of loss of estate is another issue. For this purpose, the matter deserves to be remanded.

9. Hence, the civil miscellaneous appeal is allowed and the order under appeal is set aside. The O.P. is remanded to the Tribunal for fresh consideration on merits. The Tribunal shall proceed to decide the matter on merits, without taking any objection as to limitation. It shall be open to the appellants herein to adduce additional evidence to substantiate their plea as to the cause of death as well as the income of the deceased. The second respondent shall also be entitled to adduce such evidence as it intends to. There shall be no order as to costs.