

(1993) 12 AP CK 0014

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 452 of 1989

Khairullah @ Babu, Lorry Driver and Another

APPELLANT

Vs

Smt. Anita @ Amruthalal Patel and Others

RESPONDENT

Date of Decision : 24-12-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B
Penal Code, 1860 (IPC) — Section 302

Citation : (1994) 1 ALT 338

Hon'ble Judges : G. Radhakrishna Rao, J

Bench : Single Bench

Advocate : Philkhana Ramarao, for the Appellant; N. Vasudeva Reddy, for Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

G. Radhakrishna Rao, J.—This is an appeal preferred by the appellants, who are respondents 1 and 2 (Driver and Owner of the lorry respectively) challenging the judgment dated 30th January 1989 in O.P. No.571 of 1987 on the file of the Motor Accidents Claims Tribunal, Rangareddy District at Saroornagar.

2. On 26-8-1987 at about 2-45 p.m. while the deceased was returning on his scooter from Patancheru to Kukatpalli, and reached Madinaguda Darga he met with an accident on account of the lorry ABT 8718 proceeding from Hyderabad in the opposite direction which was driven by the 1st respondent-driver in a rash and negligent manner. The lorry dashed against the scooter of the deceased and he received multiple injuries and while he was taking medical treatment in Hyderabad Nursing Home, he succumbed to the injuries on 19-9-1987.

3. The petitioners-claimants have examined P.W. 2 Narayana Singh, the Head Constable attached to Lingampalli P.S. who is stated to be a direct witness to the accident. According to him, on the date of accident at about 2.45 p.m. the accident took place. He stated that he was returning from Lingampalli on his cycle, that the scooter came from behind him and opposite to them from

Hyderabad the offending lorry came at good speed. According to him, the lorry was coming on the middle of the road and came towards the scooterist and knocked him down. He deposed that there was no rain or drizzle at that time. According to the driver, at the time of the accident there was rain and the deceased who was driving the scooter tried to wear water-proof coat holding the handle of the scooter in one hand and in that process he lost control over the scooter and due to confusion came and dashed the lorry. When P.W.2 has stated that there was no rain at the time of accident, the taking out of rain coat by the deceased does not arise and this is invented to throw the blame on the deceased, the lower tribunal, who has got the advantage of observing the demeanour of the witness, observed that the evidence of P.W.2 is really picturesque and graphic in all its meticulous details. In addition to the oral evidence of P.W. 1, Exs.A-1 to A-10 documents are also marked. Ex. A-1 is the certified copy of the F.I.F. which was registered on the basis of the report given by PAV.2. The contents of Ex. A-1 are corroborated by the evidence of P.W.2. Ex. A-3 the report given by the Motor vehicles Inspector also shows that the accident was not caused due to any mechanical defects of the lorry. Ex.A-10 is the in-patient discharge ticket of Hyderabad Nursing Home which shows that suddenly due to cardio respiratory failure the deceased died which is a consequence to head injury.

4. It is vehemently contended by Sri P. Rama Rao, learned Counsel appearing for the appellants that no autopsy was conducted over the dead body of the deceased to arrive at the cause of death. It may be remembered that the deceased died during the course of medical treatment after about 25 days after the accident and he succumbed to the injuries. As already stated, Ex.A-10 in-patient discharge ticket of the Hyderabad Nursing Home where the deceased was undergoing treatment at the time of his death, shows that due to cardio-respiratory failure the deceased died which is a consequence and secondary to head injury. The head injury was sustained by the deceased at the time of the accident. It is not a case u/s 302 I.P.C. wherein the conducting of postmortem examination to know the cause of death may be necessary. In this case the cause of death is known from the documentary evidence, especially Ex.A-10 and also from the evidence of P.W.2. The evidence of P.W.2 is convincing. In the light of both oral and documentary evidence available in this case, the failure to conduct post-mortem examination over the dead body of the deceased cannot be taken as a circumstance against the claimants, who are claiming compensation for the death of the deceased.

5. P.W.1, who is the wife of the deceased, stated about the status of the deceased. She has filed the partnership deed Ex.A-5. Ex.A-8 school leaving certificate is also filed which gives the date of birth of the deceased as 26-6-1962 which means that the deceased died at his 25th year. As regards the compensation also, Ex.A-5 partnership deed shows that the deceased entered into partnership to carry on timber business. Ex.A-6 is the income tax statement. The lower tribunal has considered the oral and documentary evidence and

ultimately fixed the compensation at 2,14,000/-. It is contended that the 1st petitioner has remarried and consequently she is not entitled to any compensation. On the date when she gave evidence and when the award was passed, she did not remarry. Even if there is remarriage it cannot be taken as a ground to refuse compensation to her. She is only a widow and no persons of equal status of the deceased will come forward to marry a widow. The lower tribunal has considered all the aspects of the matter in right perspective and granted the compensation and I do not see any reason to interfere with the same.

6. The C.M.A. is therefore dismissed. No costs.