

(2019) 10 TEL CK 0009
In the Telangana High Court
Case No : M.A.C.M.A. No. 1785 Of 2006

M/s. United India Insurance Company Ltd.	APPELLANT
Vs	
Mohd.Naseeruddin Patel And Others	RESPONDENT

Date of Decision : 28-10-2019

Acts Referred:

Citation : (2019) 10 TEL CK 0009

Hon'ble Judges : T. AMARNATH GOUD, J

Bench : Single Bench

Advocate : V. Sambasiva Rao, Kota Subba Rao

Final Decision : Dismissed

Judgement

1. This appeal is preferred by the appellant/Insurance Company questioning the Award of the V Additional Metropolitan Sessions Judge, Mahila Court-cum-XIX Additional Chief Judge, City Criminal Courts at Hyderabad (for short, the Tribunal) in O.P.No.2736 of 2003, dated 12.06.2006.

2. The brief facts of the case are that respondent No.2 is the wife, respondent Nos.3 and 4 are the children and respondent Nos.5 and 6 are the parents of the deceased, Kolkur Ashok. On 29.10.2001 at about 10.30 pm., while the deceased was going on his motorcycle bearing No.AP23T 5067 from Kohir to Sadasivapet, and when he reached near Gangakatva Bridge in the village limits of Aroor, Medak District, a jeep bearing No.KA38M 0596 came from Hyderabad side in a rash and negligent manner and dashed against the motorcycle. In the said accident, the deceased fell down on the road and died on the spot. Respondent Nos.2 to 6 herein filed the aforesaid OP against the owner of the jeep (respondent No.1 herein) and the insurer of the jeep (appellant herein), claiming compensation of Rs.8,00,000/- for the death of the deceased.

3. Before the Tribunal, owner of the jeep and the insurance company filed separate counter affidavits denying the allegations and contended that the jeep was not involved in the accident and that they are not liable to pay any

compensation and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the jeep and awarded total compensation of Rs.3,95,000/- under various heads, with interest at the rate of 7% per annum. Aggrieved by the said Award, the appellant/Insurance Company filed the present appeal.

5. Sri V.Sambasiva Rao, learned counsel for the appellant, submits that the jeep in question was not involved in the accident and that the case was manipulated against the driver of the jeep after due deliberations. He further submits that admittedly, the deceased was hit by an unknown vehicle as is evident from Ex.A.1, FIR. He further submits that when the evidence of P.W.2 is to the effect that the jeep dashed against the motorcycle and vanished from the accident site, it would be difficult for him to remember the jeep number, when the accident occurred in the night at about 10.30 pm. He further submits that though P.W.2 stated that he informed about the accident to the police immediately after the accident, no reasons were assigned as to why police could not trace out the vehicle until 23.12.2002, when the accident occurred on 29.10.2001. Basing on the above submissions, he argued that the crime jeep is a planted one and seeks to set aside the award of the Tribunal. In support of his arguments, he relied upon the decisions of this Court in APSRTC, Hyderabad V. N.Krishna Reddy 2004 (3) ALD (NOC) 312 and United India Insurance Co., Ltd., Sanga Reddy Town V. G.Mallaiah 2010 (6) ALD 13 .

6. Per contra, Sri Kota Subba Rao, learned counsel for respondent Nos.2 to 6, submits that the jeep in question was very much involved in the accident which was detected in the police investigation. In the FIR, the particulars of the vehicles were not mentioned because the complaint was lodged by the brother of the deceased on the information given by some other person. As he was not the eyewitness to the accident and as the information received by him was not clear about the particulars of the vehicle, he only mentioned that an unknown vehicle hit the deceased. Therefore, mere non-mentioning of the vehicle particulars is not a consequence. He further submits that P.W.2, who is the eyewitness for the accident, clearly deposed that on 29.10.2001 at about 10.30 pm., while he was proceeding on a cycle along with his friend, a jeep bearing No.KA38M 0596 hit the motorcycle of the deceased, due to which, the deceased died on the spot. As P.W.2 clearly mentioned the jeep number which hit the deceased, the same is enough to conclude that the jeep of respondent No.1 involved in the accident. Therefore, no interference is required in the award passed by the Tribunal. Consequently, the appeal is liable to be dismissed. In support of his arguments, he relied upon the decisions of this Court in New India Assurance Co. Ltd. V. Anela Sathyamma 2015 ACJ 1352 , P.Suneela and Others V. Shaik Kamal and Another 2019 (2) ALD 390 (DB) .

7. In N.Krishna Reddy's case (1 supra), the Investigating Officer therein solely,

basing on the statements of witnesses recorded by him, seems to have charge sheeted and, in those circumstances, this Court held that the allegations contained in charge sheet are true and they have to be proved by adducing oral evidence. In the present case, the Police made investigation and traced out the vehicle and hence, the said decision is not applicable to the facts of the present case. In G.Mallaiah's case (2 supra), tractor and trailer allegedly involved in the accident produced voluntarily by driver before police after 18 days of accident found not damaged nor having any mechanical defect on inspection by M.V. Inspector and no witness including eyewitness to the accident did not state that the said tractor and trailer involved in the accident. In those circumstances, this Court held that the tractor was planted as if it was involved in accident in collusion with police. Therefore, the facts of that case are different from the facts of the present case and the said judgment does not help the appellant.

8. In the similar circumstances, a Division Bench of this Court in P.Suneela and Others's case (4 supra), held that since the informant, who lodged the report, is not an eye-witness to the incident and his source of information is the information gathered from the scene, non-mentioning of the auto number cannot be found fault. The averments in the charge-sheet, indicate that P.W.2 was examined long after lodging of the report, i.e., when they went to the scene of offence after registering the crime. When the answers elicited in the cross-examination of P.W.2, were to the effect that he noted down the auto number and informed the same to the police, one cannot find fault with the police in tracing out the vehicle. So, non-mentioning of the vehicle number in the First Information Report, cannot be given much weight to doubt the case of the claimants, more so, when the claimants have to prove their case on the touchstone of preponderance of probabilities.

9. In the present case, as the brother of the deceased was not the eyewitness to the accident, he was not clear about the particulars of the vehicle and he only mentioned that an unknown vehicle hit the deceased. The Police mentioned in the charge sheet, that they made investigation and traced out the vehicle. Apart from the same, P.W.2, who is the eyewitness for the accident, clearly deposed that on 29.10.2001 at about 10.30 pm., while he was proceeding on a cycle along with his friend, a jeep bearing No.KA38M 0596 hit the motorcycle of the deceased, due to which, the deceased died on the spot. Therefore, the facts of the judgment relied on by the learned counsel for the respondent Nos.2 to 6 apply to the facts of the present case. The appellant-insurance company, except stating that the jeep was not involved in the accident and that the case was manipulated against the driver of the jeep after due deliberations, could not adduce any evidence to that effect. There is no infirmity in the order passed by the Tribunal and, hence the appeal is liable to be dismissed.

10. Accordingly, the Motor Accident Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.