
(2014) 11 AP CK 0148
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 1065 of 2006

Parasagani Venkaiah

APPELLANT

Vs

Pandi Prasad and Others

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162
Evidence Act, 1872 — Section 145, 27, 32, 32(1)
Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 304(A)

Citation : (2014) 11 AP CK 0148

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : M. Rajamalla Reddy, Advocates for the Appellant

Judgement

B. Chandra Kumar, J.—This appeal has been preferred by the claimants, aggrieved by the order dated 02.02.2006 passed by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge (Fast Track Court) at Khammam (for short the Tribunal) in M.A.T.O.P. No. 110 of 2002.

2. For the purpose of convenience, the parties will be referred to hereinafter as they are arrayed before the Tribunal.

3. Briefly, the facts of the case are as follows:

"The claimants filed a petition before the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge (Fast Track Court) at Khammam claiming compensation of Rs. 2.00 lakhs for the death of their son Parsagani Rama Krishna @ Biksham, hereinafter referred as the deceased, under Section 166 of the M.V. Act, 1988. On 26.12.2001 at 8.00 p.m. the deceased was proceeding to Gangadevipadu along with the respondents 1 and 2 on a tractor bearing registration No. ATS 7331 and trailer bearing registration No. ATS 7332. It is alleged that the 1st respondent, who is the driver of the tractor owned by the 2nd respondent and insured with the 3rd respondent Insurance Company,

drove the same in a rash and negligent manner and applied brakes suddenly, as a result of which, the deceased and the 2nd respondent, who were sitting by the side of the driver of the tractor, fell down and the tractor ran over the deceased. Immediately, the deceased was shifted to Government Hospital, Penuballi and from there to Government Head quarters Hospital, Khammam where, while undergoing treatment, he died. It is stated that the deceased was working as a coolie and earning Rs. 100/- per day."

4. The respondents filed written statements denying the allegations made in the petition including the manner of accident, age and income of the deceased. R.1 and R.2 contended that the tractor and trailer were hypothecated with Sri Laxmi Auto Finance, Bantumalli, and as such, the said finance company is necessary party to the O.P. It is the contention of the 3rd respondent Insurance Company that the 1st respondent was not holding a valid driving licence at the time of accident, and that the vehicle was not insured with them and, therefore, they are not liable to pay any compensation.

5. On the basis of the above pleadings, the Tribunal framed the following issues for consideration:

"1) Whether the accident took place due to rash and negligent driving of the driver of the vehicle?

2) Whether the petitioner is entitled to any compensation, if so, to what amount and from which of the respondents?

3) To what relief?"

6. On behalf of the claimants, P.W.1 was examined and Exs. A.1 to A.4 were marked. On behalf of the respondents, R.Ws.1 to 3 were examined and Exs. B.1 to B.15 were marked.

7. After analyzing the oral and documentary evidence available on record, the Tribunal dismissed the claim petition. Feeling aggrieved by the same, the claimants preferred the present appeal.

8. Heard both sides.

9. The father of the deceased was examined as P.W.1. He deposed in consonance with the pleadings of the petition. He denied the suggestion that the 1st respondent was not driving the tractor at the time of accident.

10. The 1st respondent was examined as R.W.1. According to him, when the driver of the tractor went to attend calls of nature by keeping the tractor by the side of a paddy field, the deceased started to drive the tractor. Then, he admonished the deceased, why he was driving the tractor without knowing driving, for which, the deceased replied that he was stopping the tractor, and while getting down from the tractor, he fell underneath the tractor. He further deposed that the brother-in-law of the deceased was having enmity with their family, and so, he got filed a criminal case against him. He admitted that he filed

a counter and he knows the contents thereof. He stated that in the counter he got it mentioned that one Darsu was the driver of the tractor. He denied the suggestion that he did not get it mentioned in the counter that the deceased was driving the tractor and due to his fault, the accident occurred. He further admitted that he did not give any report to the police that the deceased was driving the vehicle at the time of accident.

11. The 2nd respondent, owner of the vehicle, was examined as R.W.2. He deposed that the driver of the tractor went to attend calls of nature, and at that time, the deceased started to drive the tractor and fell down from it, and that as per his instructions, his advocate prepared a written statement and he signed in it, after knowing the contents therein. He further deposed that he does not remember whether he got it mentioned in the written statement that the deceased drove the tractor, fell down and sustained injuries. He also deposed that the police did not examine him in the criminal case filed against the driver of the tractor. He admitted that he did not give any report to the higher police officials that a false case was registered against the driver of the tractor.

12. R.W.3 was examined on behalf of the Insurance Company. His evidence is that at the time of accident, R.W.1 was not holding a valid driving licence and, therefore, there is violation of conditions of the policy.

13. Admittedly, on 27.12.2001 a report was lodged by one Borra Venkateswara Rao with Penubally Police Station, Khammam District, basing upon which, the police registered a case in Crime No. 81 of 2001 against the 1st respondent for an offence punishable under Section 304(A) IPC. The Tribunal referred to Ex. A.4 Inquest Panchanama and observed that in column No. 2 of Ex. A.4, the deceased was described as tractor driver, and in Ex. A.2 charge sheet it is mentioned that the deceased went to the house of the 1st respondent as driver of the tractor. The Tribunal also referred to the suggestions made to R.Ws.1 and 2, and basing on that, came to the conclusion that the deceased was driving the tractor at the time of accident, when the driver went to attend calls of nature. The Tribunal also referred to a paper cutting marked as Ex. B.1 and also the 161 Cr.P.C. statement of one Borra Krishnaiah, who was examined as P.W.4 in C.C. No. 71 of 2002 as well as the 161 Cr.P.C. statement of P.W.1 marked as Ex. B.4 and observed as follows:

14. As per 161 Cr.P.C. statements of witnesses in C.C. No. 71 of 2002, at the time of accident the deceased was going from the tractor to the trailer and at that time R.1 drove the tractor in a rash and negligent manner and as a result the deceased fell down and sustained injuries. So, it is clear that the deceased tried to move from the tractor to trailer while the tractor was running. Thus, there is gross negligence on the part of the deceased and due to his negligence he fell down and sustained fatal injuries. The petitioners did not examine any witness to prove that R.1 drove the tractor in rash and negligent manner.

15. It is unfortunate that the Tribunal has not followed the basic principles with

regard to the use of the statements made to police. There is a clear prohibition under Section 162 Cr.P.C. that a statement recorded by police cannot be used except as provided under Sub-Section 2 of Section 162 Cr.P.C. Section 162 Cr.P.C. reads as under: Statements to police not to be signed: Use of statements in evidence.

"(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made: Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross- examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act. Explanation - An omission to state a fact or circumstance in the statement referred to in Sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

16. Admittedly, it does not fall within the ambit of Section 27 or 32(1) of the Indian Evidence Act. It is neither marked as an omission nor contradiction. It is very clear that when a person, who gave statement, is called by the prosecution for any enquiry or trial, any part of his statement may be used by the accused with the permission of the Court to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act. The basic principle, which a Judicial Officer has to follow from the beginning i.e., from the stage of entering into service as a Junior Civil Judge, is being violated by a Senior Judge, who has become a District Judge. Similarly, any statement made in the inquest also is inadmissible. Therefore, the records prepared by the Investigating Officer in a criminal case cannot be looked into, except for the purposes to mark as contradictions or omissions during trial, by the accused.

17. Be that as it may, the Tribunal should consider what are the pleadings of the parties. The case of the claimants is that the 1st respondent was driving the tractor at the time of accident and the accident occurred due to the negligent driving of the 1st respondent. This plea of the claimants is not denied by the

respondents in their written statements. When the respondents have not denied the averments made by the claimants, the same amounts to admission. When a fact is admitted by the respondents (or defendants), there is no need to prove the said fact, since admitted facts need not be proved. This is also a basic principle. In view of the above discussion, the finding of the Tribunal that the deceased drove the tractor at the time of the accident is set aside being perverse.

18. Coming to the aspect, whether the 1st respondent was having a valid driving licence or not, the settled legal position is that even in case of violation of conditions of policy, such as, driver not having a valid driving licence, the Insurance Company cannot escape from its liability and the only order that can be made is that the Insurance Company should pay the compensation to the claimants and then recover the same from the owner of the vehicle.

19. Now, coming to the quantum of compensation to which the claimants are entitled, admittedly, the deceased was aged 21 years. According to the claimants, the deceased was earning Rs. 100/- per day. Therefore, the earnings of the deceased have to be taken at Rs. 3,000/- per month. If the monthly income of the deceased is taken as Rs. 3,000/-, the annual income would be Rs. 36,000/-. Since the deceased was a bachelor, 50% has to be deducted towards living and personal expenses. If 50% there from is deducted, the contribution of the deceased to the family would be Rs. 18,000/-. Since the age of the deceased was 21 years at the time of the accident, which fact is not in dispute, applying the ratio laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the appropriate multiplier to be adopted for calculation of loss of earnings would be 18. By applying the same, the total loss of earnings would come to Rs. 3,24,000/- (Rs. 18,000/- x 18).

20. Further, the claimants, parents of the deceased, are also entitled to Rs. 1,00,000/- towards loss of love and affection, as held by the Apex Court in Vimal Kanwar and Others Vs. Kishore Dan and Others, . The claimants are also entitled for Rs. 25,000/- towards funeral expenses, as held by the Apex Court in Rajesh and Others Vs. Rajbir Singh and Others, . Thus, the total compensation would come to Rs. 4,49,000/- which is rounded off to Rs. 4,50,000/- (Rupees Four lakh fifty thousand only).

21. In Rajesh case (supra), it is also held that the Tribunal/Court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary, ignoring the claim made in the application for compensation.

22. In the result, the appeal is allowed and the impugned order of the Tribunal is set aside. The claimants shall be entitled to a total compensation of Rs. 4,50,000/- (Rupees Four lakh fifty thousand only) with interest at 9% p.a. from the date of petition till realization. The 3rd respondent Insurance Company is directed to deposit the compensation amount along with interest within three months, and recover the same from the owner. On such deposit, the claimants

shall be entitled to withdraw the entire awarded amount together with accrued interest thereon equally. The deficit court fee can be paid at the time of drafting of a decree or the same can be deducted after the 3rd respondent deposited the compensation amount. There shall be no order as to costs.

23. Consequently, miscellaneous petitions, if any, pending in the appeal shall stand closed.