

(2014) 01 AP CK 0084
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 227 of 2011

Smt. Narasamma

APPELLANT

Vs

The National Insurance Company Ltd.

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Penal Code, 1860 (IPC) — Section 304-A

Citation : (2014) 4 ALD 500 : (2014) 6 ALT 76 : (2014) 2 AnWR 960

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : Posani Venkateswarlu, Advocate for the Appellant; Katta Laxmi Prasad, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Dr. B. Siva Sankara Rao, J.—The appellants-claimants filed this appeal having been aggrieved by the Order/Award of the Chairman of the Motor Accident Claims Tribunal-cum- I Additional District Judge, Mahabubnagar, (for short, "Tribunal") in O.P. No. 213 of 1998 dated 07.12.2004.

2. The claimants are none other than mother, wife and minor children of Chakali Swamy (hereinafter referred to as "the deceased"). They filed the claim petition u/s 166 of the Motor Vehicle Act, 1988, seeking compensation of Rs. 2,50,000/- for the accidental death of the deceased against the Tractor-Trailor bearing No. AP-22/C.1586-1587 belong to the claim petition first respondent, insured with the claim petition second respondent and covered by Ex.B.1 policy, stating that the accident on 21.12.1997 was the outcome of the rash and negligent driving of the driver of the said tractor and trailer. The learned Chairman of the Tribunal dismissed the claim holding that neither the owner of the tractor and trailer nor the insurer of the said vehicle were found liable to pay compensation to the claimants.

3. Impugning the said award of the Tribunal dated 07.12.2004, the appeal is filed

with the contentions that the dismissal of the award by the Tribunal is contrary to law, weight of evidence and probabilities of the case, that the Tribunal erred in dismissing the claim petition basing on evidence of P.W.2 when other documents reveal that the death occurred due to the accident caused by the first respondent's vehicle, that the Tribunal ought to have considered the findings of the Investigating Officer, who went to the accident place and after enquiry stated in the charge sheet that the deceased was involved in the accident caused by the crime vehicle of the first respondent and thereby sought for setting aside the impugned award and to allow the claim of the claimants as prayed for.

4. Whereas it is the contention of the learned Standing Counsel for the second respondent to the claim petition, insurer that the appeal itself is not maintainable for dismissal of the appeal against the owner of the vehicle for non-payment of process to serve notice that too when he was not remained ex parte before the Tribunal having contested and even otherwise, there are no merits to interfere with the contentions in the grounds of appeal against the reasoned and well considered award of the Tribunal in dismissing the claim. Hence, prayed to dismiss the appeal.

5. Now the points that arise for consideration in the appeal are:

1. Whether the award of the Tribunal dismissing the claim is unsustainable and requires interference by this Court while sitting in appeal and if so, to what extent, what observations and what impact from dismissal of the appeal against the owner preferred by the claimants for non-payment of batta that too, when he contested before the Tribunal?

2. To what result?

POINT-1:

6. A perusal of the record before the Court clearly speaks that Ex.A.1-F.I.R was registered based on information from Government Hospital that the deceased was admitted in the hospital with injuries. That is the first document so far as this case is concerned in setting the law into motion. Ex.A.1 discloses the name of the informant as Dr. N. Srinivasan through III Town Police, Kurnool about the occurrence on 21.12.1997. The police registered Crime No. 58 of 1997 u/s 304-A I.P.C. Thereby the contents of the said hospital information speaks that the deceased was directly taken to Kurnool for treatment, where he died while undergoing treatment. The death intimation that was registered as First Information Report speaks that N.S.Ward, I.P.No.32737, date of admission 22.12.1997 at 5.55 a.m., and date of death 22.12.1997 at 9.05 a.m. and by giving the identification marks, particulars of the deceased were mentioned as Swamy, aged about 25 years, S/o.Hanumanthu, R/o.Kondapuram Village, Gadwal Mandal, Mahabubnagar District, brought by one Thimmappa (uncle) and the place in which the accident occurred was near 1 k.m away from Gadwal and the alleged cause - sustained injury due to skid of motor cycle near Gadwal on 22.12.1997 at 11.00 p.m and the nature of the injury was accident (simple or

grievous), ward in which the deceased was admitted as Neurosurgery, in the column whether dying declaration was necessary, it was stated intimation dated 22.12.1997 received from Government Hospital, Kurnool and registered crime at 9.30 hours.

7. The so-called Thimmappa, who admitted the deceased with injuries before he lost his breath, was no other than referred as uncle of the deceased. He was not examined as a witness to the claim petition. P.W.2-T. Govindu, S/o.Ramana was an agricultural labour. He claimed as eyewitness before the Tribunal besides the evidence of P.W.1, no other than the second petitioner and wife of the deceased. Ex.A.4-charge sheet was filed by the police against the so called driver of the tractor and trailer by name, Venkatesh, S/o.Jangilappa of Venkatapuram. The driver of the tractor and trailer did not even give complaint to the police much less the so called pillion rider. P.W.2 and the person who has taken the injured that is no other than the uncle did not give any report to the police surprisingly.

8. There is something to show from the material on record including the award of the Tribunal with regard to the collusion between the person, who admitted the deceased in the hospital and the claimants and P.W.2 and the owner and driver of the tractor. There is not even any explanation from the claimants for non-examination of said uncle of the deceased. The Tribunal, on appreciation of Ex.A.4-charge sheet filed against the driver of the tractor, besides Ex.A.2-MVI report, held that this is a false claim and that the evidence of P.W.2 is quite inconsistent with the version of the investigating officer in the charge sheet and deceased fell down from his bike with no involvement of tractor cum trailer to conclude.

9. Having regard to the above, the Tribunal rightly dismissed the claim petition and for this Court while sitting in appeal there is nothing to interfere with the impugned order. There shall be no order as to costs. Consequently, the Miscellaneous Applications, if any, pending in this appeal shall stand closed.