
(2006) 04 AP CK 0085
In the Andhra Pradesh High Court
Case No : CMA No. 3021 of 2004

Tammineni Aswarthu

APPELLANT

Vs

B. Fakruddin and Another

RESPONDENT

Date of Decision : 04-04-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 140(3), 166, 173
Penal Code, 1860 (IPC) — Section 304A, 337

Citation : (2006) 4 ACC 564 : (2007) ACJ 849 : (2006) 4 ALD 271 : (2006) 4 ALT 496

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S.D. Gawd, for the Appellant; N.S. Bhaskara Rao, (SC), for the Respondent

Judgement

L. Narasimha Reddy, J.—The unsuccessful claimant in O.P. No. 397 of 1998, on the file of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Ananthapur, filed this appeal, u/s 173 of the Motor Vehicles Act (for short "the Act").

2. On 25-9-1996, when the son of the appellant herein, by name T. Ramakrishna, was travelling in an auto bearing No. AHT-9148, owned by the 1st respondent and insured with the 2nd respondent, along with two other passengers, for the purpose of going to Gooty, an unidentified lorry came and hit the auto. Due to the hit, the auto fell on the left side of the road. The son of the appellant and two other passengers died, on the spot. Another passenger, by name Nagaraju, is said to have died, during the course of treatment. Crime No. 52 of 1996 was registered under Sections 337 and 304A of I.P.C. The appellant claimed a sum of Rs. 1,50,000/-, as compensation. It was alleged that the deceased was working as a Bill Collector, at a toll gate on N.H.No.7, and that he was earning a sum of Rs. 3,000/- per month. The age of the deceased is said to be 24 years.

3. The 1st respondent remained ex parte. 2nd respondent alone contested the matter. It was alleged that the appellant was not depending upon the deceased, and that the O.P. was defective, since the driver of the vehicle was not impleaded, and the particulars of the lorry, which hit the auto, are not furnished. It was also pleaded that the driver of the auto did not hold valid driving licence, and the auto was not covered with valid permit for plying as a vehicle for hire. Through its order, dated 21-9-2001, the Tribunal dismissed the O.P., on recording a finding that the driver of the auto was not responsible for the accident.

4. Heard the learned Counsel for the appellant and learned Counsel for the 2nd respondent.

5. The appellant presented his claim, under Sections 140 and 166 of the Act. He deposed as PW.1, and examined one Golla Pothanna as PW.2, as an eyewitness to the accident. He has also filed the certified copy of the FIR in Crime No. 52 of 1996, marked as Ex.A-1, and Post-mortem certificate of the deceased, marked as Ex.A-2. The 2nd respondent examined RW-1, and filed the insurance policy, marked as Ex.B-1, and the Final Report as Ex.B-2,

6. The death of the deceased occurred, on account of the fact that an unidentified lorry hit the auto, from behind. Though PW.2 stated that the driver of the auto has driven his vehicle in a rash and negligent manner, the contents of the FIR did not support his version. The Tribunal discussed the matter, with reference to the oral and documentary evidence, as well as the reported cases, and brushed aside the evidence of PW.2, on the ground that it is contrary to the pleadings in the petition. He proceeded further, and held that the negligence of the driver of the lorry was not proved, since the offending vehicle was neither available, nor identified. To this extent, no objection can be taken to the order passed by the Tribunal.

7. Whatever may have been the justification for the Tribunal, for rejection of the claim of the appellant u/s 166 of the Act, the facts on record did attract the liability of the respondents u/s 140 of the Act. Once it has emerged that the deceased was travelling in an auto and he died in an accident involving it, the Tribunal ought to have awarded a sum of Rs. 50,000/-, as provided for u/s 140 of the Act, irrespective of the fact whether the driver of the auto was liable for the accident, at all. The very title of Chapter-X of the Act suggests that the liability to pay the compensation would arise, even if there does not exist any fault, on the part of the vehicle involved in the accident. Sub-section (3) of Section 140 of the Act makes it clear that a claimant shall not be required to plead and establish that the death or permanent disability, in respect of which the claim is made, was due to any wrongful act, negligence or default of the owner of the vehicle.

8. Therefore, the C.M.A. is allowed, and a sum of Rs. 50,000/- (fifty thousand only) is awarded u/s 140 of the Act. The accident occurred in the year 1996. Having regard to the rate of interest prevailing at the relevant point of time, the

interest is awarded at 9% per annum, from the date of filing of the O.P. The appellant shall also be entitled for costs of Rs. 2,000/-. The respondents 1 and 2 are held jointly and severally liable to deposit the said amount, and the appellant shall be entitled to withdraw the same, as and when deposited.