



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE FIFTH DAY OF MAY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 421 OF 2012

Between:

1. THE NEW INDIA ASSURANCE CO. LTD., PRAKASAM DIST. Rep. by its
Divil. Manager, Divil,. Office
Trunk Road, Ongole, Prakasam District.

...PETITIONER(S)

AND:

1. KANCHERLA CHENCHU RAMAIAH & 4 OTHERS S/o Chenchu
Ramanaiah
R/o Chintalapalem Village & Post
Jarugumalli Mandal, Prakasham District.
2. Kancherla Lingamma W/o Chenchu Ramanaiah
R/o Chintalapalem Village & Post
Jarugumalli Mandal, Prakasham District.
3. Kancherla Vineela D/o Venkata Ramanaiah
R/o Chintalapalem Village & Post
Jarugumalli Mandal, Prakasham District.
4. Kancherla Praveen S/o Venkata Ramanaiah
R/o Chintalapalem Village & Post
Jarugumalli Mandal, Prakasham District.
5. Kancherla Rajyam W/o Venkata Ramanaiah
Lorry AP 16 /T-5549
R/o Chintalapalem Village & Post
Jarugumalli Mandal, Prakasham District.

...RESPONDENTS

Counsel for the Petitioner(s): A JAYANTHI

Counsel for the Respondents: NUTHALAPATI KRISHNA MURTHY

The Court made the following: ORDER



THE HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

M.A.C.M.A.No. 421 of 2012

JUDGEMENT:

The appellant is 2nd respondent/Insurance company and the respondents are claim petitioners and respondent No.1 in M.V.O.P.No.99 of 2009 on the file of the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Ongole. The appellant filed the appeal questioning the legal validity of the order of the Tribunal.

2. For the sake of convenience, both the parties in the appeal will be referred to as they are arrayed in the claim application.
3. The claim petitioners filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988 against the respondents praying the Tribunal to award an amount of Rs.7,10,000/- towards compensation for the death of Kancherla Venkata Ramanaiah in a motor vehicle accident that occurred on 21.09.2007.
4. The brief averments of the claim petition are as follows:



The deceased is a driver of lorry bearing registration No.AP 16T 5549 of the 1st respondent. On 21.09.2007 the deceased went to Mahi Agro Pvt. Ltd. with a load of tobacco in the said lorry. As there was no cleaner in the lorry, the deceased went to the top of the lorry and while he was removing the tarpaulin over the load, unfortunately he slipped from the lorry and fell down and sustained multiple injuries and a fracture to left leg and later, he succumbed to injuries on 27.09.2007 while undergoing treatment. The 1st respondent is owner and the 2nd respondent is insurer of the said lorry. Therefore, both the respondents are liable to pay compensation to the claim petitioners.

5. The 1st respondent was set *ex parte*.

6. The 2nd respondent/Insurance company filed a written statement by denying the manner of accident. It is pleaded that report to police was given one week after the occurrence of the incident and the petitioners and the 1st respondent cooked up a story that the deceased was the driver of the lorry at the time of accident for getting wrongful gain from the Insurance company.



7. Based on the above pleadings, the Tribunal framed the following issues for trial:

1. Whether the death of the deceased occurred due to rash and negligent driving of lorry bearing No.AP 16T 5549 by its driver?
2. Whether the petitioners are entitled to claim any compensation and if so, to what amount and against whom? and
3. To what relief?

8. During the course of enquiry in the claim petition, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A.1 to A.18 were marked. On behalf of the 2nd respondent/Insurance company, R.W.1 was examined and Ex.B.1 was marked.

9. At the culmination of the enquiry, after considering the evidence on record and on appreciation of the same, the Tribunal allowed the petition in part and awarded a sum of Rs.5,18,800/- towards compensation to the claim petitioners. Being aggrieved by the impugned award, the 2nd respondent/Insurance company filed the appeal.



10. Heard learned counsels for both the parties.
11. The grounds urged by the appellant/Insurance company are that the Tribunal failed to see that as per the first information report, the number of the vehicle involved in the accident is APK 5549, but the policy was issued for vehicle No.AP 16T 5549, and the claim petitioners falsely implicated the vehicle No.AP 16T 5549 for getting wrongful gain from the Insurance company, though it was not involved in the accident.
12. Now, the points for determination are:
- 1) Whether the deceased died in a motor vehicle accident?
and
 - 2) Whether the order passed by the Tribunal needs any interference?
13. **POINT Nos.1 & 2:** The pleadings of the petitioners are as follows:-

The petitioner Nos.1 and 2 are parents and petitioner Nos.3 and 4 are children of the deceased. The 1st respondent is owner of lorry bearing registration No.AP 16T 5549 and also wife of the deceased Venkata Ramanaiah. On 21.09.2007 the deceased



went to Mahi Agro Pvt. Ltd. with a load of tobacco in the said lorry. As there was no cleaner in the lorry, the deceased got into the top of the lorry and while he was removing the tarpaulin, which was tied, he slipped from the lorry and fell down. The petitioners further pleaded that as a result of which, the deceased Venkata Ramanaiah sustained multiple injuries and a fracture to his left leg. Immediately, he was shifted to Dr. Prasada Rao Hospital, Ongole and six days thereafter, he died while undergoing treatment in Peoples Trauma and Emergency Hospital, Guntur.

14. Perused Ex.A.1-copy of first information report, Ex.A.2-copy of inquest report, Ex.A.3-copy of postmortem certificate. Ex.A.1-first information report shows that a crime was registered under Section 174 Cr.P.C. on 27.09.2007, i.e., after a lapse of six days from the date of alleged incident, on which date a complaint was given as per the case of the Investigating Officer. As per the pleadings of the petitioners, the deceased proceeded as a driver on the lorry bearing No.AP 16T 5549 and after proceeding for some distance, he himself stopped the lorry and got into the top of it and while he was removing the tarpaulin, which was tied, he



slipped from the lorry and fell down, as a result, his left leg was fractured and he received multiple injuries. The lorry number is not at all mentioned in Ex.A.1.

15. Another important point is that the 1st respondent is none other than the wife of the deceased. As per the case of the petitioners, P.Ws.1 to 3 are not eye witnesses to the incident. Originally, the lorry No.AP 16T 5549 was mentioned in the pleadings of the petitioners and in the cause title of the petition it was mentioned that the said lorry was insured with the 2nd respondent. At page No.4 of the claim application in para-B, it was mentioned that the respondents are the owner and the insurer of lorry No.AP 16T 5549.

16. In Ex.A.2-inqest report, the offending lorry was mentioned as ATK 5549 and the deceased was the driver of the said lorry on the date of incident i.e., on 21.09.2007. In Ex.A.4-final report filed by the police, the offending lorry number was also mentioned as ATK 5549. But, in the pleadings in para-B of the claim application at page No.4, the number of the offending vehicle was mentioned as AP 16T 4459. The said variation of the number of the



offending lorry is not at all explained by the petitioners in the pleadings. The petitioners did not also produce any cogent evidence to prove the said aspect.

17. As stated supra, the offending vehicle was mentioned in Exs.A.2 and A.3 as ATK 5549. The A.S.I. of Police, who investigated the case at the relevant point of time, was also examined as P.W.3. He deposed that he enquired about the vehicle involved in the accident and the same was mentioned in Ex.A.2-inquest report, and in Ex.A.4-final report, it was mentioned that the deceased fell down from lorry No.ATK 5549. But, in the pleadings of the petitioners at page No.4 of the claim application, it was mentioned that the deceased proceeded as a driver of the 1st respondent in the lorry No.AP 16T 5549.

18. The complaint was issued to the concerned police after six days of the date of alleged incident. Initially, the first information report was registered under Section 174 of Cr.P.C. It is not in dispute by the petitioners that the date of alleged incident is 21.09.2007. The complaint was lodged on 27.09.2007. The said delay is also not at all explained by the petitioners. No doubt, in



the motor accident claims application, there is no need to explain the delay in registering the first information report. But in the instant case, there is a discrepancy of number of lorry involved in the incident. Exs.A.2 and A.3 show that the offending lorry number is ATK 5549, but as per the pleadings of the petitioners at page No.4 of the claim application, the offending lorry number was mentioned as AP 16T 5549.

19. Learned counsel for the petitioners relied on a judgment of the Hon'ble Supreme Court in ***Kurvan Ansari @ Kurvan Ali Vs. Shyam Kishore Murmu*** (Civil Appeal No.6902 of 2021 dated 16.11.2021) wherein it is held as under:

“In this case it is to be noted that the accident was on 06.09.2004. In spite of repeated directions, Schedule-II is not yet amended. Therefore, fixing notional income at Rs.15,000/- per annum for non-earning members is not just and reasonable.”

i) He also placed reliance on a judgment of the High Court of Delhi at New Delhi in ***Smt. Dhaneshwari Vs. Tejeshwar Singh***



(MAC.App.997 of 2011 and batch dated 19.03.2012. In the said judgment, it is held thus:

“Difficulty arises where a Claims Tribunal is unable to find any evidence to assess the loss of dependency. What should be taken as income to arrive at the loss suffered by the LRs of the deceased or the victim himself in the case of injury in a motor accident? In all such cases, a Claims Tribunal sometimes has to make some guess work objectively considering the facts and circumstances of each case.”

20. The facts and circumstances in the cited decisions are different to that of the instant case. The facts germane are, it is not the case of the claim petitioners that the deceased fell down from the top of the lorry, by that time the lorry is moving, and the 1st respondent, who is owner of the alleged offending vehicle, is none other than the wife of the deceased.

21. In the present case, the accident itself is not at all proved by the claim petitioners. The pleadings of the petitioners itself do not come under the definition of ‘accident’ as defined under the Motor Vehicles Act and it cannot be treated as ‘accident’. As per the



pleadings of the petitioners, the alleged incident occurred on 21.09.2007 and six days thereafter i.e., on 27.09.2007 the deceased died. The complaint was also lodged on 27.09.2007 and the first information was registered under Section 174 Cr.P.C. on the same day. Therefore, the petitioners must establish the accident.

22. The above circumstances clearly reveal that there are several suspicious circumstances which surround the case of the petitioners. As noticed above, the petitioners failed to establish the accident, therefore, granting compensation to the claim petitioners under the Motor Vehicles Act does not arise. As stated supra, the pleadings of the petitioners itself do not come under the definition of 'accident' as defined under the Motor Vehicles Act. Therefore, the claim application itself is not at all maintainable. The learned Tribunal committed a grave error in awarding compensation to the claim petitioners. Therefore, the impugned award passed by the Tribunal is not sustainable under law and it is liable to be set aside.



23. Accordingly, the appeal is allowed and the order and decree dated 10.08.2010 passed by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Ongole, in M.V.O.P.No.99 of 2009 are hereby set aside. Consequently, M.V.O.P.No.99 of 2009 is dismissed. The amount, if any, deposited by the appellant shall be refunded to the appellant. No order as to costs in the appeal.

As a sequel, miscellaneous petitions, if any, pending in the appeals shall stand closed.

V.GOPALA KRISHNA RAO, J

5th May, 2023

Note: L.R. copy be marked.

(b/o)

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HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

M.A.C.M.A.No. 421 of 2012

5th May, 2023

cbs



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

M.A.C.M.A.No. 421 of 2012

Between:

The New India Assurance Co. Ltd.,
rep. by its Divisional Manager, Divisional
Office, Ongole, Prakasam District.

.. Appellant

Vs.

Kancherla Chenchu Ramaiah
and others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 05.05.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE V. GOPALA KRISHNA RAO

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |



V. GOPALA KRISHNA RAO, J

***THE HON'BLE SRI JUSTICE V. GOPALA KRISHNA RAO**

+M.A.C.M.A.No. 421 of 2012

% 05-05-2023

The New India Assurance Co. Ltd.,
rep. by its Divisional Manager, Divisional
Office, Ongole, Prakasam District.

.. Appellant

Vs.

\$ Kancherla Chenchu Ramaiah
and others

.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for appellant : Ms. A. Jayanthi

^ Counsel for respondent Nos.1 to 4 : Sri N.Krishna Murthy

^ Counsel for 5th respondent : Sri N.Madhava Rao

? CASES REFERRED :

1) Judgment of the Hon'ble Supreme Court in Civil Appeal
No.6902 of 2021 dated 16.11.2021.



2) Judgment of the High Court of Delhi at New Delhi in
MAC.App.997 of 2011 and batch dated 19.03.2012.