

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY 2015

PRESENT

THE HON'BLE MR. JUSTICE N.K. PATIL

AND

THE HON'BLE MRS. JUSTICE RATHNAKALA

MISC. FIRST APPEAL NO.5745/2014 (MV)

BETWEEN:

1. SMT.HANUMAMMA
W/O K.H.VENKATARAM
AGED ABOUT 51 YEARS
2. SRI K.V.SRINIVASA
S/O K.H.VENKATARAM
AGED ABOUT 28 YEARS
3. KUMARI SUMALATHA
D/O K.H.VENKATARAM
AGED ABOUT 26 YEARS

ALL ARE RESIDING AT
KALLAPURA ROAD
2ND CROSS, MALLESHWARA VILLAGE,
KADUR POST, KADUR TALUK
CHIKMAGALUR DISTRICT – 577 548.

PRESENTLY RESIDING AT:
HOSAMANE,

CHIKMAGALUR

...APPELLANTS

(BY SRI H.P.LEELADHAR, ADV.)

AND:

1. SRI LOLACHARI
S/O LATE SIDDACHARI
AGED ABOUT 51 YEARS
R/AT OPP. SWAMAMBA TEMPLE,
MALLESHWARA, KADUR TALUK
CHIKMAGALUR DISTRICT – 577 548.
2. SRI H.L.SHEKHARAPPA
S/O LATE C.L.LAKSHMAIAH
AGED ABOUT 54 YEARS
R/AT BENKI COLONY
KADUR TOWN
CHIKMAGALUR DISTRICT – 577 548.
3. THE ORIENTAL INSURANCE CO. LTD.,
CHIKMAGALUR – 577 548

NO.1 IS THE DRIVER
NO.2 IS THE RC OWNER
NO.3 IS THE INSURER OF THE VEHICLE – LORRY
BEARING REGN. NO.CG-04/ZC-8269

...RESPONDENTS

(BY SRI ASHOK N.PATIL, ADV. FOR R3;
R1 & R2 – SERVED AND UNREPRESENTED)

THIS M.F.A. IS FILED UNDER SECTION 173(1) OF MV
ACT AGAINST THE JUDGMENT AND AWARD DATED
21.06.2014 PASSED IN MVC NO.437/2013 ON THE FILE OF THE
I ADDITIONAL DISTRICT JUDGE, MEMBER, MOTOR
ACCIDENT CLAIMS TRIBUNAL, CHIKMAGALUR, DISMISSING
THE CLAIM PETITION FOR COMPENSATION.

THIS MFA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 21/07/2015 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **RATHNAKALA J.**, DELIVERED THE FOLLOWING:-

J U D G M E N T

Aggrieved by the judgment and award passed by the I Additional District Judge and Member, MACT, Chikamagalur in MVC.437/2013, dated 21.06.2014, wherein the claim petition filed under Section 166 of the M.V. Act was rejected by the Motor Accident Claims Tribunal, the claimants are in appeal. The claimants are the wife and children of late K.H.Venkataram, who expired on the night of 03.04.2013, while he was proceeding on his TVS XL bearing registration No.KA-18/U-1708 on Maravanji road, 1st cross.

2. On the untimely death of late K.H.Venkataram, the appeallants/claimants filed claim petition before Motor Accident Claims Tribunal. Their case was, while the deceased was proceeding on the left side of the road, by observing traffic rules near the Areca garden of Anjanappa, the 1st respondent being the

driver of the Lorry bearing registration No.CG-04/AC-8269, came from behind in a rash and negligent manner with great speed and dashed the vehicle of the deceased from backside; due to the impact, the deceased fell down, sustained grievous injuries and died at the spot. One Annappa, son of Venkatagiriappa, lodged a complaint in respect to the accident to the police; the deceased was hale and healthy; he was a retired Jeep driver of the Tahsildar and a pensioner; on his untimely death, the wife and children are facing difficulty in maintaining the family.

3. The claim was contested by the owner and the insurer of the offending Lorry bearing registration No. CG-04/AC-8269. Though all the three respondents appeared through their respective Counsel, the contesting respondents disputed the petition averments regarding the age, occupation, income of the deceased, injuries sustained, expenses incurred and the manner of the accident as pleaded by the claimants. It was further contended that accident occurred due to negligence of the deceased himself and the compensation claimed was excessive and exorbitant.

4. After holding full pledged enquiry, the Tribunal dismissed the claim petition by declining to accept the evidence placed by the claimants about involvement of the Lorry and its driver.

5. Sri H.P.Leeladhar, learned Counsel for the appellants / claimants submits that at the first instance in his objection statement the Insurance Company never claimed that the police colluded with the claimants in filing the charge sheet against the first respondent / driver. Enough documentary evidence was before the Tribunal demonstrating that the accident occurred due to the involvement of the Lorry bearing registration No.CG-04/ZC-8269 driven by its driver / first respondent. After investigation by Investigating Officer, the first respondent has been charge sheeted for the offences punishable under Sections 279, 304 (A) of IPC r/w. Section 181 of Motor Vehicles Act. In support of their case, the first claimant / widow of the deceased was examined as PW.1 and one eyewitness as PW.2. Merely because the Investigating Officer had omitted to record the statement of PW.2 in the criminal case, the Court below has rejected the entire version

of the charge sheet paper. As per the principles laid down in the case of *Bimla Devi & Others Vs. Himachal Road Transport Corporation & Others* reported in *AIR 2009 SC 2819*, the claimants can merely establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt cannot be applied while adjudicating the claim under Section 166 of Motor Vehicle Act. Learned Counsel further submits that the deceased was the only bread winner of the family, due to his untimely death, the family is put to great financial and emotional loss. The Court below has not quantified compensation for which the claimants are entitled. Hence, reasonable compensation may be awarded by setting aside the impugned order.

6. Learned Counsel for the Insurance Company, while subscribing to the order of the Court below submits that it is a case of hit and run; the complaint which was lodged at the earliest point of time, did not refer to the identity of the driver of the offending Lorry, it is only at a later stage, the statements of witnesses were

concocted by the claimants in collusion with the Investigating Officer to help the claimants. The discrepancy appearing on the very face of the police records cannot be ignored. The claimants were not able to prove the involvement of the first respondent/Driver and the Lorry in question in the alleged accident. Hence, the Tribunal was very well within its jurisdiction in rejecting the claim of the appellants.

7. In the light of the above rival submissions and on perusal of the impugned judgment with the lower Court records, we find that late K.H.Venkataram, died on the road in the night of 03.04.2013, while proceeding on his TVS XL bearing registration No.KA-18/U-1708, on Maravanji road. The complaint was lodged by one Sri Annappa, the nephew of the deceased on 04.04.2013, at 8.00 a.m. However, the FIR is received by the jurisdiction Magistrate at 2.56 p.m. In the complaint, though it was stated that the Lorry Regn. No.CG-04/AC-8269 driven by its driver rashly and negligently hit the TVS XL from backside and fled away, there was no mention about the name and identity of the driver. The

Tribunal in the body of its judgment takes note of the fact, that PW.2 who was examined by the claimants as the eyewitness to the incident, was not cited as a witness in the criminal case. Admittedly, PW.1 / the widow of the deceased was not an eyewitness. The Tribunal disbelieved PW.2 by assigning its reason that, if really he was an eyewitness he would have lodged a complaint regarding the accident, and about the involvement of the Lorry or he would have given information about the accident to the family members of the deceased. He has neither furnished information to the police nor to the family. Further this witness during his evidence had stated that he had not seen the registration number of the offending vehicle.

8. Thus, the Tribunal has drawn inference that PW.2 was not present in the spot at the time of the accident and disbelieved his evidence. The Tribunal also took note of the fact that in the complaint / Ex.P.2, nothing was stated by the complaint as to from whom he received the information about the involvement of the Lorry in-question in the accident. The complaint did not cite

anybody as having witnessed the accident. From the charge sheet papers produced by the respondents Exs.R.6 to R.9, are the statements of witnesses under Section 161 of Cr.P.C. dated 04.04.2013. As per these statements, the witnesses have categorically named the first respondent as the driver of the offending Lorry. The IMV report of 05.04.2013, is at Ex.R.5 though depicts damage to both the vehicle, still the Tribunal noticed that there is no corroboration between the damages listed in the IMV report and the damages mentioned in the seizure mahazaar of the Lorry, Ex.R.2. That prompted the Tribunal to disbelieve the involvement of the Lorry.

9. It is also another fact to be noted that the Investigating Officer is said to have recorded the statement of witness on 04.04.2013 about the name and identity of the driver of the Lorry. But he records further statement of the complainant on 05.04.2013, implicating the first respondent as driver of the Lorry. The Tribunal has noticed that the claimants and the first respondent are

all from the same village and by afterthought they have foisted a false case.

10. On a perusal of the impugned judgment *viz a viz*, the evidentiary material, we are of the opinion that the claimants could not establish the involvement of the first respondent and the Lorry bearing registration No.CG-04/ZC-8269 in the alleged vehicular accident dated 03.04.2013. The judgment of the Apex Court in *Bimla Devi* (supra) stands distinguished on facts. Impugned order is well reasoned and does not warrant interference.

11. Accordingly, appeal is dismissed. No order as to costs.

Sd/-
JUDGE

Sd/-
JUDGE

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