

HIGH COURT OF ANDHRA PRADESH

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M.A.C.M.A. No. 680 of 2024

Between:

Bodapati Thatarao

.....APPELLANT

AND

Bodapati Ramasubbamma and others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **17.12.2024**

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN**

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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 Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

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! Counsel for the Appellant : Sri Soora Venkata Sainath,

Counsel for the Respondents : --

< Gist :

> Head Note:

? Cases Referred:

1) (2000) 5 SCC 113

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&
THE HON'BL SRI JUSTICE CHALLA GUNARANJAN**

M.A.C.M.A. No. 680 of 2024

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri Soora Venkata Sainath, learned counsel for the appellant and perused the material on record.

2. This appeal under Section 173 of the Motor Vehicles Act, 1988 (in short 'M.V.Act') has been filed by the appellant, challenging the award dated 26.04.2024, passed by the Motor Accidents Claims Tribunal (VIII Additional District Court), Ongole (in short 'the Tribunal') in M.V.O.P.No.253 of 2018.

3. The Tribunal allowed the MVOP with cots, awarding compensation of Rs.32,09,000/- with future interest @7.5% per annum from the date of filing of the petition till the date of deposit of the amount.

4. The aforesaid MVOP was filed by the present respondents No.1 to 4, claiming compensation on account of death of Bodapati Satyanarayana, the deceased, who went out from his house on his motorcycle to Surampalli Hanumantha Weigh Bridge, Chimakurthy on 02.04.2917 at about 4 p.m. While returning to home, when he entered into Ongole-Podili road and took a turn to Chimakurthy, his motorcycle was dashed by the offending car bearing registration No.AP27-BF9369 being driven by its driver rashly and negligently with high speed, which was proceeding to Ongole. As a result, the deceased sustained grievous injuries and died on the spot.

5. The claimant/1st respondent is the widow and claimant/3rd respondent is the son of the deceased. The other two claimants/respondents No.2 & 4 are the daughters of the deceased. The claim was filed against the 5th respondent herein the owner-cum-driver of the offending vehicle, and its insurer, the National Insurance Company Limited, the present 6th respondent. The appellant herein was the 3rd respondent in the MVOP. The appellant is also the son of the deceased late Bodapati Satyanarayana and thus, related to the claimants. It appears that he did not join the claimants-respondents and consequently, was impleaded as 3rd respondent in MVOP.

6. Case of the respondent-insurance company was that at the time of incident the deceased was aged 65 years and was riding motorcycle without driving licence and without wearing helmet and accident occurred due to his own negligence and that the accident was not reported by the insured in collusion with the petitioners/claimants with a view to cause loss to the insurance company, which was not liable to pay any compensation.

7. The appellant (3rd respondent in MVOP) filed counter in MVOP. He strongly suspected the involvement of the husband of the 2nd claimant (daughter of the deceased) with the driver of the offending car in causing accident to murder Bodapati Satyanarayana, and to detect the truth, he filed the complaint before the Superintendent of Police, Prakasam District. The police, after investigation, closed the complaint. Being aggrieved, the appellant filed W.P.No.5260 of 2019 before this Court seeking impartial investigation either by CBI or CBCID. At that time of decision in MVOP, that writ petition was

pending. The appellant in his counter submitted that the claimants intentionally suppressed the said fact for getting wrongful gain. He requested to dismiss the MVOP.

8. The Tribunal framed the following issues:

- "1) Whether the accident had occurred on 02.04.2017 in which Bodapati Satyanarayana died due to rash and negligent driving of the TATA Tiago car bearing No.AP 27 BF 9369 by 1st respondent or was there any negligence on the part of the deceased?
- 2) Whether the petition is bad for non joinder of owner and insurer of the motorcycle as necessary parties?
- 3) Whether the petitioners are entitled for compensation, if so, to what amount against which of the respondents?
- 4) To what relief?"

9. In evidence, on behalf of the claimants, PW 1-Bodapati Srinivasa Rao and PW 2-Chaluvadi Chandra Sekhar, were examined and they got marked Exs.A1 to A16, viz., Ex.A1-Attested copy of FIR in Cr.No.37/2017 of Chimakurthy PS; Ex.A2-Attested copy of Inquest report; Ex.A3-Attested copy of postmortem certificate of deceased Bodapati Satyanarayana, dated 03.04.2017; Ex.A4-Attested copy of charge sheet in CC.155/17 in Cr.No.37/2017 on the file of Spl.JMFC, Excise Court, Ongole; Ex.A5-Attested copy of accident report issued by MVI dated 19.04.2017; Ex.A6-Attested copy of insurance policy issued by R2; Ex.A7-Attested copy of certificate of registration of car bearing No.AP 27 BN 9369; Ex.A8-Attested copy of driving licence of R1; Ex.A9-True copy of SB account of deceased B. Satyanarayana, Andhra Bank, Chimkurthy; Ex.A10-Copy of Tobacco grower ledger of deceased issued by Tobacco Board, Ongole-1,

dated 09.09.2014; Ex.A11-Copy of grower ledger of deceased B.Satyanarayana issued by Tobacco Board, Ongole-1, dated 21.10.2015; Ex.A12-Copy of grower ledger of deceased B.Satyanarayana issued by Tobacco Board, Ongole, dated 25.07.2016; Ex.A13-CC of registered sale deed under which deceased and L. Subhashini jointly purchased land an extent of Ac.19.93 cents dated 14.03.2007; Ex.A14-Certified copy of registered sale deed under which deceased purchased land and extent of 149 gadies, dated 02.04.2008; Ex.A15-CC of registered sale deed under which deceased and 3 others purchased an extent of Ac.3.49 cents dated 20.05.2011; and Ex.A16-CC of partition deed evidencing the partition between joint family members and deceased dated 03.10.2009;.

10. On behalf of respondents, the 3rd respondent/present appellant-Bodapati Thatha Rao, was examined as RW 1 and Ex.B1-Copy of policy bearing No.55270031166160032191 was marked on their behalf.

11. The Tribunal recorded the finding on issue No.1 that the accident occurred due to rash and negligent driving of the offending car causing the death of Bodapati Satyanarayana. It also recorded that there was no negligence on the part of the deceased. The evidence of the 3rd respondent (appellant herein) which was also recorded as RW 1, as per para-12 of the judgment of the Tribunal, did not state anything regarding the negligence on the part of the deceased. He, as RW 1, also admitted about the properties possessed by the deceased, but he stated that he was the younger son of Bodapati Satyanarayana and also stated about the property dispute with the

claimant/respondents and filing of the suits for partition and declaration being O.S.No.172 of 2017 and O.S.No.97 of 2018 on the file of the 1st Additional District Court, Ongole. Those suits were filed by the 3rd respondent (appellant herein). The Tribunal on the said aspect, observed that the property dispute between the claimants or/and the 3rd respondent (appellant herein) with the deceased Satyanarayana and the rights in the said property was immaterial for the Tribunal in adjudicating the claim of the claimants, arising out of the death of the deceased in an accident. Consequently, the Tribunal was of the view that the evidence of RW 1 was of no consequence in awarding compensation to the claimants due to the death of the deceased Satyanarayana on account of rash and negligent driving of the offending vehicle by its driver.

12. The Tribunal allowed the MVOP vide judgment dated 26.04.2024 and awarded the compensation, as aforesaid, holding the present respondents Nos.5 & 6 jointly and severally liable to pay the compensation. The Tribunal while awarding the compensation also held that the 3rd respondent/the present appellant was also entitled to Rs.2,00,000/- out of the compensation awarded.

13. Challenging the said award, the appellant has filed this appeal.

14. The challenge to the award is not on the ground of amount of compensation awarded nor as regards its apportionment.

15. Learned counsel for the appellant submitted that the accident dated 02.04.2017 in which Bodapati Satyanarayana died was a deliberate action on the part of the 1st respondent in MVOP, the owner-cum-driver of the offending vehicle in causing the accident, in which there was criminal conspiracy to do

away the life of the deceased Satyanarayana in camouflage in the motor vehicle accident. He submitted that it being a case of murder, the claim petition MVOP was not maintainable and the award of the Tribunal granting compensation is unsustainable. He further submitted that though the compensation has also been granted to the appellant herein, but he is not interested in the compensation. In proper investigation, it would have been revealed that the accident was not accident, but a deliberate act of murder, in the camouflage of the motor vehicle accident. He submitted that in view thereof, the claimants were also not entitled for the grant of the amount under the award. The award on this ground deserved to be set aside. He submitted that the learned Tribunal failed to appreciate the evidence of the appellant and record that it was a deliberate act of homicide. Learned counsel for the appellant relied upon the judgment in the case of ***Rita Devi v. New India Assurance Co.Ltd.***¹ to contend that when there was motor accident as contemplated under the M.V.Act, but it was a camouflage for murder, the petition for compensation under the M.V.Act would not be maintainable and the Tribunal would have no jurisdiction to award compensation.

16. We have considered the aforesaid submissions and perused the material on record, as also the judgment in the case of ***Rita Devi*** (supra).

17. The point for determination is as under:

¹ (2000) 5 SCC 113

“Whether the judgment and award of the Motor Accidents Claims Tribunal is without jurisdiction in the light of the submissions advanced and calls for any interference?”

18. We shall first consider the judgment in ***Rita Devi*** (supra).

19. In ***Rita Devi*** (supra) the facts were that one Darshan Singh claiming to be a power-of-attorney holder of the appellants before the Hon’ble Apex Court filed a claim petition along with the said appellants under Section 163-A of the Motor Vehicles Act, 1988 claiming damages for the death caused to Dasarath Singh during the course of his employment in an accident arising out of the use of motor vehicle. The Motor Accidents Claims Tribunal, Nagaland came to the conclusion that the death of Dasarath Singh was caused by an accident coming within the purview of the Motor Vehicles Act, and therefore, held that the owner of the vehicle was liable to compensate the death in money value. Since there was an agreement between the vehicle owner and the Insurance Company to compensate the employer of the vehicle, the legal and statutory liability was fastened on the Insurance Company. The Insurance Company preferred an appeal before the Gauhati High Court (Kohima Bench). The High Court by its judgment dated 09.03.1998, came to the conclusion that there was no motor accident as contemplated under the M.V.Act. The High Court held that the case was a case of murder and not of an accident, hence a petition for claim under the provisions of the M.V.Act did not arise. The High Court allowed the appeal and set aside the judgment and the award made by

the Tribunal. The matter approached the Hon'ble Apex Court at the instance of the claimants.

20. In ***Rita Devi*** (supra), the question was, can a murder be an accident in any given case? The Hon'ble Apex Court observed that the "murder", as it is understood, in the common parlance is a felonious act where death was caused with intent and the perpetrators of that act normally had a motive against the victim for such killing. But there were also instances where murder could be by accident on a given set of facts. The difference between a "murder" which was not an accident and a "murder" which was an accident, the Hon'ble Apex Court observed that, that depended on the proximity of the cause of such murder, and opined that, if the dominant intention of the act of felony was to kill any particular person then such killing was not an accidental murder but was a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act, then such murder is an accidental murder.

21. The Hon'ble Apex Court held that stealing of the autorickshaw was the object of the felony and the murder that was caused in that act of felony, was only incidental and thus the death of Dasrath Singh was caused accidentally in the process of committing theft of autorickshaw. The Hon'ble Apex Court held that the murder of Dasarath Singh was due to accident arising out of the use of the motor vehicle, therefore, the trial Court rightly came to the conclusion that the claimants were entitled to compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of

Dasarath Singh was not caused by the accident involving the use of the motor vehicle.

22. Paragraph-10 and 14 of ***Rita Devi*** (supra) read as under:

“10. The question, therefore is, can a murder be an accident in any given case? There is no doubt that “murder”, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a “murder” which is not an accident and a “murder” which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the autorickshaw, was dutybound to have accepted the demand of fare-paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the autorickshaw and in the course of achieving the said object of stealing the autorickshaw, they had to eliminate the driver of the autorickshaw then it cannot but be said that the death so caused to the driver of the autorickshaw was an accidental murder. The stealing of the autorickshaw was the object of the felony and the murder that was caused in the said process of stealing the autorickshaw is only incidental to the act of stealing of the autorickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing theft of the autorickshaw.”

23. The judgment in ***Rita Devi*** (supra), also made it clear that if it is established by the claimants that the death or disablement was caused due to accident arising out of the use of the motor vehicle, then they will be entitled for payment of compensation. The expression “arising out of” has a wider connotation. For the purpose of awarding compensation, there should be the causal relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement, but the same is not required to be direct and proximate. It can be less immediate. This would imply that accident should be connected with the use of the motor vehicle but the said connection need not be direct and immediate.

24. In the present case, a specific finding has been recorded by the Tribunal that the accident occurred only due to rash and negligent driving of the owner/driver of the offending car. The said finding was recorded on consideration of, *inter alia*, the evidence of the eyewitness PW 2 and PW 1- Bodapati Srinivasarao, claimant, another son of the deceased. The evidence of RW 1 (3rd respondent/present appellant) was also considered.

25. It is not in dispute that the complaint filed by the present appellant suspecting involvement of the husband of the second claimant with the driver of the offending Car, was closed after investigation by the police.

26. The W.P.No.5260 of 2019, learned counsel for the appellant submitted, was also dismissed on 18.03.2024. The said writ petition was filed for the following relief:

“....to issue an order or orders or direction or a writ one in the nature of Writ of Mandamus declaring the action of the official respondents more particularly the 1st and 2nd respondent in not initiating action pursuant to petitioners’ representation dated 19.12.2018 and ordering re-investigation by CBCID Police pertaining to FIR No. 37 of 2017 on the file of the 4th respondent which culminated into C.C. No. 155 of 2017 on the file of the Hon’ble Special Excise Magistrate Ongole as being illegal, arbitrary, unconstitutional and consequently direct the 1st and 2nd respondent to consider petitioners’ representation dated 19.12.2018 and order for reinvestigation by CBCID Police in FIR No 37 of 2017 on the file of the 4th respondent which culminated into C.C.No 155 of 2017 on the file of the Hon’ble Special Excise Magistrate Ongole and pass...”

27. The writ petition No.5260 of 2019 was dismissed vide Order dated 18.03.2024, observing that re-investigation was not enunciated in the Code of Criminal Procedure, except, the further investigation under Section 173 (8) Cr.P.C. Further, when once the Criminal Court, after full fledged trial acquitted the accused, the question of re-investigation by the police would not arise. From the said judgment, it is also evident that the driver-cum-owner of the offending car, after full fledged trial, was acquitted. The appellant herein/petitioner in W.P.No.5260 of 2019 was also set at liberty to take appropriate measures as available under law.

28. Thus, the complaint of the appellant, suspecting murder for the investigation was closed and his petition for direction to CBI/CBCID for re-investigation was also dismissed. The driver/owner of the offending car was also acquitted in the criminal trial.

29. It is also not the case of the appellant (5th respondent in MVOP) nor is the submission of his learned counsel that the death was not "arising out of use of motor vehicle". So, there is casual relationship between the use of the motor vehicle and the accident, resulting in death of the deceased.

30. Consequently, we are of the view that so far as the maintainability of MVOP is concerned, in view of the specific finding recorded that, Bodapati Satyanarayana died in the motor accident i.e., involving the offending car due to rash and negligent driving of its driver, the claim petition was maintainable by the claimants for claiming compensation. The Tribunal rightly entertained MVOP and awarded the compensation. The point framed is answered accordingly.

31. We are not observing anything with respect to the amount of compensation as that is not the subject matter of this appeal.

32. Admittedly, there was property dispute between the appellant on one hand and the claimants on the other hand with respect to the property of the deceased Bodapati Satyanarayana. The present appeal appears to have been filed to deprive the claimants of the compensation awarded by the Tribunal.

33. Learned counsel for the appellant submitted that the appellant is not interested in the compensation amount awarded in his favour. We are not concerned. It is for the appellant to take or not to take the compensation amount.

34. The appeal lacks merit. The submission advanced has no substance.

35. The Appeal is dismissed at the admission stage. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

Date: 17.12.2024
Dsr

Note:
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