

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

M.A.C.M.A No.259 OF 2012

Between:

K.Saroja and others

... Appellants

And

Shaik Jani Miya and another

..Respondents

DATE OF JUDGMENT PRONOUNCED : 13.03.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 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 their fair copy of the Judgment? Yes/No

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ M.A.C.M.A No.259 of 2012

% Dated 13.03.2024

K.Saroja and others

... Appellant

And

\$ Shaik Jani Miya and another

..Respondents

! Counsel for the Appellant: Sri S.Surender Reddy

^ Counsel for the Respondent: Sri V.Samba Siva Rao for R3

>HEAD NOTE:

? Cases referred

Civil Appeal No.3021 of 2000

(arising out of SLP (C) NO.17493 of 1998)

HONOURABLE SRI JUSTICE K.SURENDER**M.A.C.M.A No. 259 of 2012****JUDGMENT:**

1. The appellants are aggrieved by the dismissal of claim petition filed by the appellants herein, which claim petition was filed for the reason of death of the son of the 1st petitioner, by order in O.P.No.734 of 2001 dated 08.11.2006 passed by the Motor Accidents Claims Tribunal-cum-III Additional District Judge (FTC), ASifabad.

2. Briefly, the case of the claimants is that the 1st respondent's husband was owner-cum-driver of his jeep. The deceased was also working as driver of the jeep bearing No.AP-1/6642. On 25.04.1999, some unknown persons engaged the jeep to go to Vemulawada from Ramakrishnapur. Accordingly, the deceased took them in the said jeep. The owner also accompanied the deceased in the jeep. On the intervening night of 26/27th April, 1999, while returning from Vemulavada, some unknown persons stopped the vehicle, dragged both the owner of the vehicle and the deceased driver and attacked them with weapons and killed them. The dead bodies were found at the distance of 230 yards from the main road, around 5.00 p.m on 27.04.1999 and

accordingly police were informed. A crime was registered by the Boinpally Police station of Karimnagar District for the offences under Sections 302 and 201 IPC on 28.04.1999. Thereafter, the police filed final report on 28.02.2002 stating that the offenders could not be detected. In the said final report, it was stated that the Sarpanch of Venkatraopalli Village lodged complaint that money of Rs.70,000/- was stolen from the jeep by unknown offenders by killing the driver and owner of the jeep. During investigation, the police came to know that the jeep was found abandoned on 06.05.1999 in Hyderabad within Sanathnagar Police Station limits. The said jeep was produced before the VI Metropolitan Magistrate, Hyderabad. Though efforts were made to trace out the culprits who have perpetrated the crime of killing two persons, the same could not be detected and case was closed.

3. The claimants approached the MACT claiming compensation from the insurer of the jeep which was driven by the deceased. The tribunal found that death occurred within the limits of Boinpally Police Station in Karimnagar District and there was no proof that deaths occurred during the trip to Vemulavada. In the said circumstances, it cannot be said that the death of the

deceased occurred while driving the vehicle. Accordingly, dismissed the claim.

4. Learned counsel appearing for the appellants would submit that it is admitted that both the driver and the owner had gone in the jeep which was engaged by unknown persons. In the said circumstances, the murder was committed for the purpose stealing the vehicle, which was incidental to the object of stealing the vehicle. In similar circumstances, the Hon'ble Supreme Court in the case of **Rita Devi v. New India Assurance Co. Ltd** in Civil Appeal No.3021 of 2000 (arising out of SLP (C) NO.17493 of 1998) held that auto rickshaw was stolen and the murder was incidental to the stealing of the auto rickshaw. Therefore, in the facts and circumstances, the death of the deceased was caused in the process of committing theft of auto rickshaw. Accordingly, the Hon'ble Supreme Court granted compensation to the claimants.

5. On the other hand, it was argued on behalf of the insurance company that the findings of the Tribunal are in accordance with the circumstances and probability. There is no nexus that is shown in between the death of the deceased and also the

commission of theft of the jeep. Accordingly, the judgment of the Tribunal is proper and requires no interference.

6. The dead bodies of both the deceased were found on 28.04.1999. Nearly after ten days on 06.05.1999, the vehicle was traced in Sanathnagar area of Hyderabad city. The place where the dead bodies were found and where the vehicle was found is at a distance of 160 kms. P.W.1, who is the mother was examined to state that during the course of his driving, the deceased was murdered and jeep was subjected to theft. However, during the course of her cross-examination, she stated that the other deceased, who is the owner came to her house without getting the jeep and he took her deceased son to his house. Thereafter, she has seen dead body of her deceased son and Ghouse Pasha at the place of the accident. P.W.2, who is the brother-in-law of the owner of jeep Ghouse Pasha stated that the deceased used to run the vehicle as he was engaged as a driver and was paid salary of Rs.1,800/- per month. On coming to know about the deaths, he went to the place where the dead bodies were found. Both the witnesses, who are examined on behalf of the claimants did not state that both the deceased had boarded the jeep and drove away. There is no witness to state that they have seen both

the deceased driving away in the jeep. In the absence of such evidence of there being no witnesses, who have seen the deceased going in the jeep along with other passengers, the entire case of the claimants that some people must have engaged the jeep and they must have killed the deceased while trying to commit theft is all an assumption. In the absence of any evidence to show that both the deceased were last seen in the jeep, it cannot be said that murders were committed for the purpose of stealing the jeep. If at all, the intention was to steal the jeep, either the jeep would have been stolen or parts would have been separated and sold, but nothing of that sort happened. The jeep was found abandoned in Sanathnagar area of Hyderabad.

7. On the basis of wild assumptions, compensation cannot directed to be paid by the insurance company. Even by preponderance of probability, no case is made out by the claimants to order compensation. I do not find any infirmity with the finding of the Tribunal.

8. Accordingly, the Appeal is dismissed.

K.SURENDER, J

Date: 13.03.2024.

kvs