

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 2079 OF 2006

Judgment:

The petitioner in OP No. 187 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Nalgonda, at Miryalguda, preferred the instant appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order, dated 22.06.2006, dismissing the claim laid for awarding compensation of Rs.1,20,000/-, under Section 166 of the Act, for the injuries sustained by him in the accident.

2. For the sake of convenience, the parties hereinafter referred to as arrayed before the Tribunal in the Original Petition.

3. Facts, in brief, are that on 29.04.2003 at about 11.00 AM while the petitioner was proceeding on his scooter on the left side of the road from his village Avanthipuram towards Miryalguda town and when he reached near Housing Board Colony, suddenly a motor cycle bearing registration No.AP-24D-125, driven by its driver in a rash and negligent manner, came and dashed against his scooter. As a result, he sustained fracture of right shaft femur, fracture of right clavicle bone and fracture of 4th and 5th ribs. According to him, he was immediately shifted to Sai Krishna Multi Speciality Hospital, Miryalguda where Dr. Chandra Sekher Reddy, Orthopaedic Surgeon, treated him as inpatient. The Station House Officer,

Miryalguda Town Police Station registered a case in Crime No.73 of 2003 under Section 338 IPC, against the driver of the Hero Honda Motor Cycle. The petitioner claiming that he was earning Rs.8,000/- and odd per month as NSP employee and he used to contribute for himself and his family and due to injuries sustained he had suffered a lot of mental agony and physically he became permanently disabled, claimed compensation of Rs.1,20,000/-. The respondents 1 and 2 being the owner and insurer are liable to pay compensation to him.

4. Before the Tribunal, the first respondent remained *ex-parte*. The second respondent opposed the claim and also obtained permission under Section 170 of the Act in IA No.79 of 2006 from the Tribunal to put forth the defences as are available to the owner of the vehicle. The second respondent has taken a specific stand requiring the petitioner to prove that the vehicle involved in the accident was insured with its company and the effective driving license being possessed at the time of accident by the driver of the first respondent.

5. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, before the Tribunal, the petitioner besides examining himself as PW.1 also examined Dr. B. Chandra Shekar Reddy as PW.2 and marked Exs.A1 to A6 besides marking Ex.C1 certificate issued by Dr. B. Chandra Shekar Reddy. On behalf of the second respondent, Aechuri Srinivas was examined as RW.1 and Exs.B1 and B2, which are sworn statements of the petitioner and investigation report, were marked.

6. The Tribunal has taken up issue No.1 and elaborately discussed on the involvement of the vehicle bearing registration No.AP-24D-125 and having found that complaint was lodged by the petitioner himself soon after the accident mentioning that the offending vehicle was bearing registration No.AP-24B-3951 and subsequently by influencing investigating agency got changed the number to AP-24D-125, as the driver of the crime vehicle bearing registration No.AP-24B-3951, which was mentioned in the first instance, was not possessing the insurance policy coverage and even observing that both the vehicles which were referred in the FIR and in the charge sheet are the make of 'Bajaj Kawasaki' and stand in the name of father and father-in-law of the accused and further, as the vehicle referred in the FIR does not have any insurance coverage, another vehicle of the accused is introduced in the charge sheet and assigning reasons answered issue No.1 holding that the vehicle bearing registration No.AP-24D-125 was not involved in the accident and found issue No.1 against the petitioner.

7. On issue No.2, while referring to its finding rendered on issue No.1, dismissed the claim recording a finding that the claim petitioner cannot maintain the OP not only against the insurance company but even against respondent No.1 on account of his unfairness in approaching the Court with distortion of facts.

8. The said finding rendered by the Tribunal is challenged by the petitioner contending in the grounds of appeal that, the Tribunal ought to have seen that due to rash and negligent

driving of the motor cycle bearing registration No.AP-24D-125, the accident has occurred and ought to have granted Rs.1,20,000/- with interest at 24% p.a., that the petitioner sustained permanent disability, therefore, sought to set aside the order and to allow the appeal by granting the compensation.

9. Heard Sri M. Rajamalla Reddy, learned counsel for the petitioner and Sri N. Mohan Krishna, learned counsel for respondent No.2 – Insurance Company.

10. Notice on respondent No.1 is not served. However, the same is of no consequence for the reason that in fact the notice was sent to the correct address as mentioned in the cause title in the OP.

11. Learned counsel for the appellant while contending that the complainant has not given the complaint and that his version was recorded by the police and in fact the police after due investigation identified the correct number of the vehicle involved in the accident that being AP-24D-125 and even laid charge sheet as in Ex.A2 against the driver of the said vehicle and, therefore, the Tribunal was not right in taking a different view holding that the said vehicle was not involved in the accident. It is also his submission that the appellant is entitled to compensation and to sideline the contents of Ex.A1-FIR taking aid of the decision of this Court in

K. Rajani v. M. Satyanarayana Goud^[1].

12. On the other hand, it is the submission of the learned

counsel for the second respondent – Insurance Company that the order of the Tribunal since based on proper appreciation of evidence cannot be withheld, that the evidence of RW.1 and Exs.B1 and B2 would make it abundantly clear that the vehicle involved in the accident was AP-24B-3951 and PW.1 who lodged the complaint mentioned the registration number as such and on knowing the fact that the said vehicle was not covered by any insurance policy, the vehicle bearing registration No.AP-24D-125 is introduced as the vehicle involved in the accident so as to claim compensation and prayed to dismiss the appeal.

13. Perused the order under challenge and the evidence let in by the petitioner and the contesting respondent. To decide the controversy herein the evidence of PW.1 is of utmost importance. The Tribunal made observations in paragraph '10' of the order thus:

“The insurance company has examined its Investigator Sri Aechuri Srinivas as RW-1. The evidence of RW-2 runs that, as per the address given in the charge sheet, he proceeded to the house of injured and he recorded his sworn statement at Avanthipuram village, which gives two inconsistent numbers of the vehicle involved in the accident as find out in the FIR, and charge sheet, ultimately the injured Ramulu has furnished the number of the crime vehicle AP-24-B-3951. Thereafter, he contacted the accused in the criminal case and he found the vehicle with number as furnished in the FIR., but the accused has refused to give the documents pertaining to the said vehicle. The investigation revealed that, both vehicles which are referred in the FIR, and in the charge sheet are the make of 'Bajaj Kawasaki'

and those vehicles stands in the name of father and father-in-law of the accused and further as the vehicle referred in the FIR, does not have the insurance coverage the another vehicle of the accused is introduced in the charge sheet. All the witnesses cited in the charge sheet are close relatives of the accused and injured except M. Saidulu, whose whereabouts are found to be not known. On his verification of the injured and on his statement, he found only one injury on the person of the injured M. Ramulu, but in the medical certificate four injuries are shown. As part of investigation, he collected Ex.C-1. Ex.B-1 is the statement of injured person M. Ramulu, dated 31.08.2004. Nothing has come out in the cross-examination of RW-1 to attribute any interestedness on the part of RW-1 to speak against the petitioner. On comparison of the signatures of the deponent under the Ex.B-1 sworn statement with the signatures of the PW-1 on his deposition and in the claim petition, it is so vivid that these signatures are tallying and seems to be subscribed by one and the same person. The aforementioned evidence unearthed by the insurance company would leave several doubts regarding the involvement of the vehicle bearing No.AP-24-D-125 and it is a fit case where adverse inference can be drawn against the petitioner that on 29.04.2003 he was hit by the rider of the vehicle bearing No.AP-24-D-125. It may be a proved fact that PW.1 has sustained one injury in the given accident, but the crime vehicle is not the vehicle involved in the accident. Hence, the issue 'whether the accident was due to rash and negligent driving by the driver of motor cycle bearing No.AP-24D-125' is answered accordingly."

14. Now adverting to the decision relied on by the learned counsel for the appellant in **K. Rajani's** case (1 supra), the facts would reveal that in the first information report neither the description nor the registration number of the vehicle was given, but it was mentioned as unknown vehicle. Subsequently, during the course of investigation the concerned investigating agency found out that the vehicle mentioned therein was involved in the accident and filed charge sheet. Whereas, the facts in the instant case stand on altogether a different footing. It is not as though in the FIR-Ex.A1 the vehicle which was involved in the accident, more particularly, which can be termed as offending vehicle, is

un-specified, but the registration number of the vehicle is specifically mentioned. This stands as a vital circumstance on record which gives rise to inference adverse to the case of the petitioner in making claim. The second circumstance which attains significance is, that it was PW.1 himself who lodged the complaint mentioning the registration No. AP-24B-3951 and the Tribunal has also made a definite observation that the signature of the petitioner is similar with that of the signature of the complainant ruling out the possibility of none else making that report with the registration number mentioned therein except PW.1 herein. It is no doubt true, Ex.A2 charge sheet shows the vehicle number as AP-24D-125, but the fact that the petitioner has not chosen to examine the owner to explain away the contents of Ex.A1 of which himself was the author, nor the Investigating Officer who laid charge sheet as to the reasons in changing the registration number of the vehicle from that of the one occurring in the accident bearing No.AP 24D 125 or at least

he has not examined the witnesses who are cited as eye witnesses in the list of witnesses filed along with charge sheet. On the other hand the evidence of RW.1 clinches the issue ruling out the involvement of the vehicle bearing registration No.AP 24D 125. Thus, viewed from any angle, absolutely there is no merit in the appeal and, in fact, it is a case where the very vehicle captioned as the accident vehicle is planted as can be gathered from the circumstances mentioned herein before. Certainly, the Tribunal or the Court cannot be carried away by such inconsistent versions where the petitioners come forward making claims for compensation by changing the versions from one to another.

15. Accordingly, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

16. As a sequel thereto, the Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 23.02.2015

Nsr

[\[1\]](#) 2014(6) ALT 331