

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1263 of 2009

JUDGMENT:

Challenging the Award dated 11-12-2008 in M.V.O.P.No. 139 of 2005 passed by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Kadapa (for short 'the Tribunal'), the claimant preferred the instant MACMA.

2 a) The factual matrix of the case is thus:

On 29.09.2004 at about 6.10 PM when the claimant was returning to Mydukur from Chinnagurtuvalur village on his T.V.S. Champ bearing No. AP 04 B 862 and on the way when he reached a tri-road junction at Alladupalli temple on Proddatur-Mydukur road, a tractor bearing No. AP 04 D 5735 came in opposite direction being driven by its driver in a rash and negligent manner and dashed the claimant's vehicle and sped away. The claimant suffered fracture to his left tibia and other parts in the resultant accident. It is averred that the accident was occurred due to the fault of the tractor driver. On these pleas, the claimant filed M.V.O.P.No.139 of 2005 under Section 166 of M.V.Act, 1988 (for short' the M.V.Act') against the respondent Nos. 1 and 2, who are the owner and insurer of the offending vehicle and claimed Rs.4,50,000/- as compensation under different heads as mentioned in the O.P.

b) The first respondent remained *ex parte*.

c) Second respondent/Insurance Company filed Counter and opposed the claim petition denying the material averments made in the claim petition. R.2 denied that the accident was occurred due to the fault of tractor driver and thereby the claimant suffered injuries. It contended that the claimant was also equally responsible for the accident as he drove his TVS Champ in a rash and negligent manner and dashed the first respondent's tractor. On this contention, R.2

pleaded that the owner and insurer of T.V.S Champ are necessary parties to the claim petition which is bad for their non-joinder. R.2 further contended that the claim is excessive and untenable.

c) During trial, PWs.1 and 2 were examined and Exs.A1 to 12 were marked on behalf of claimant. No evidence was adduced by respondent No.2.

d) On appreciation of oral and documentary evidence, the Tribunal dismissed the claim petition on the finding that the claimant failed to prove that the tractor bearing No.AP 04 D 5735 was involved in the accident. This finding was arrived by the Tribunal due to the fact that the claimant has not mentioned the registration number of the Tractor in Ex.A1—FIR.

Hence, the appeal by the claimant.

3. The parties in the appeal are referred to as they stood before the Tribunal.

4. Heard arguments of Sri J. Seshagiri Rao, learned counsel for Appellant/claimant and Sri B. Devanand, learned counsel for respondent/Insurance Company.

5) Impugning the award, the learned counsel for appellant/claimant vehemently argued that the claimant has clearly mentioned the offending vehicle as tractor in Ex.A.1—FIR and due to injuries, he could not observe the registration number of the tractor and hence he did not mention its number in FIR and by that count alone, it cannot be said that the tractor was not involved in the accident. The learned counsel submitted that on the very next day of accident, the claimant lodged FIR and on the same day, the police have arrested the driver of the tractor, which is evident from Ex.A.2—Charge sheet. It shows that the tractor was very much involved in the accident. He further argued that the second respondent in its Counter has not at all expressed any

doubt regarding the involvement of the tractor bearing No.AP 04 D 5735 in the accident and it has not taken any plea to that effect. As such, the Tribunal ought not to have expressed any doubt regarding the involvement of the tractor in question in the accident. He, thus, prayed to allow the appeal.

6) Per contra, the learned counsel for respondent/Insurance Company, while supporting the award, argued that if really the tractor bearing No. AP 04 D 5735 was involved in the accident, there was no reason why the claimant did not mention its registration number in Ex.A.1—FIR. When he could see the tractor causing accident, he could have also seen the registration number of the tractor and he ought to have mentioned the same at the earliest point of time i.e., at the time of lodging FIR. Non mentioning of the registration number thus throws any amount of doubt on the involvement of the tractor in question in the accident. The learned counsel further argued that the Tribunal has rightly rejected the claim petition and prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination is:

“Whether the Tribunal is right in dismissing the claim petition?”

8) **POINT:** The accident in this case was occurred on the evening of 29-09-2004 at about 6.10 PM near a tri-road junction at Alladupalli temple on Proddatur-Mydukur Road. According to claimant, he was returning to Mydukur on his T.V.S. Champ bearing No. AP 04 B 862 and at that time, the offending tractor bearing No. AP 04 D 5735 came in opposite direction and dashed him. Now the bone of contention is about the involvement of the said tractor.

9) In this context, a perusal of Ex.A.1—FIR would show that it was registered on the basis of the statement given by the claimant/PW.1 at Area Government Hospital, Proddatur at about 2.00 PM on 30.09.2004 by the Police of Chapadu, Kadapa District. The statement of

claimant/PW.1 is that when he reached Alladupalli temple on Proddatur-Mydukur Road on the evening of 29-09-2004 at about 6.10 PM, at that time, a tractor came at high speed without blowing horn and dashed his vehicle and thereby he fell down and sustained injuries to his left leg. He further stated that he did not see the tractor number, but he can identify the tractor and its driver. He also stated that the driver sped away with tractor without stopping the vehicle. The temple clerk admitted him in Jayabharatreddy Hospital, Proddatur, for first aid treatment and on 30-09-2004 his brother-in-law—Ravindranath came and admitted him in Government Hospital, Proddatur and the police came and recorded his statement.

10) So, the statement of the claimant would show that the accident was occurred on the evening of 29-09-2004 at about 06.10 PM and the police recorded his statement at 2.00 PM on 30.09.2004. It is the clear version of claimant that a tractor was involved in the accident and he did not see its registration number. Be that as it may, a perusal of Ex.A.2—Chargesheet would show that police after investigation found that tractor bearing No. AP 04 D 5735 was involved in the accident. In the Chargesheet it is mentioned that on the statement of the claimant, a case in Cr.No.79 of 2004 was registered and during investigation, on the same day i.e., 30-09-2004, LW.8 arrested the driver of the Tractor-- Mallela Ganesh at about 09.00 pm and enlarged him on bail. The sequence of events would show that the accident was occurred on the evening of 29-09-2004 at about 6.10 PM and FIR was lodged on 30-09-2004 at about 2.00 PM and the accused was arrested at about 09.00 pm on the same day. From this, it is clear that in the above short span of time, it will be difficult for the police to implant the tractor in question in this case even making a wild assumption that they colluded with the complainant. Therefore, in my considered view, the version of complainant/PW.1 and version in charge sheet regarding involvement of Tractor bearing No.AP 04 D 5735 in accident can be

believed. Further, a perusal of the Counter filed by the second respondent would show that it did not take any emphatic plea in its counter that the tractor in question was not at all involved in the accident. For all these reasons, the findings of the Tribunal that the claimant failed to establish that the tractor bearing No. AP 04 D 5735 was involved in the accident cannot be countenanced.

11) In the result, the M.A.C.M.A is allowed setting aside the Award dated 11-12-2008 passed by the Tribunal in M.V.O.P.No. 139 of 2005 and it is held that the tractor bearing No. AP 04 D 5735 was involved in the accident and with this observation, the matter is remanded to the Tribunal for fresh disposal on merits according to law. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 08.07.2015

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