

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.912 OF 2009

JUDGMENT:

This appeal is filed by the second respondent challenging the judgment and award dated 21.11.2008 passed in M.V.O.P. No.292 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-V Additional District Judge, Nellore.

2. The parties will hereinafter be referred to as they are arrayed before the Tribunal for the sake of convenience.

3. The facts leading to filing of the present appeal, in brief, are as follows: On 19.2.2006 at about 7.00 P.M., the petitioner and his sister-in-law boarded the auto bearing No.AP 26W 1538 at Narayana Medical College Hospital, Dhanalakshmipupram, Nellore to go to Nellore town. When the auto reached near Apollo Hospital, the driver of the Ambassador Car bearing No.AP 26 9181 had driven the same in a rash and negligent manner and hit the auto. The Station House Officer, Nellore South Traffic Police Station registered a case in Crime No.33 of 2006 under Sections 337 and 338 IPC against the driver of the car. Due to the accident, the petitioner sustained injuries on various parts of the body and took treatment in Bollineni Super specialty Hospital, Nellore and spent huge amount towards medicines and treatment. By the time of the accident, the petitioner was aged about 63 years and used to earn Rs.5,000/- per month. Due to the injuries sustained in the accident, the petitioner could not attend the work for a long time and thereby lost his income. The ambassador car, which belongs to the first respondent, was insured with second respondent as on the date of the accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2,00,000/- to the petitioner with interest and costs.

4. The first respondent remained *ex parte*. The second respondent

filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the driver of the auto and therefore, the driver, owner and insurer of the auto are necessary parties to the petition. The driver of the car was not having valid and effective driving licence as on the date of the accident and therefore, there is no obligation on the part of this respondent to indemnify the liability of the first respondent. The amount of the compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. Hence, the petition is liable to be dismissed so far as this respondent is concerned.

6. Basing on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the accident occurred on account of the rash and negligent driving of the vehicle bearing No.AP 26 9181 by its driver and whether it resulted in injuries to the victim?
- 2) Whether the petitioner is entitled for compensation? If so, to what amount?
- 3) Which of the respondents are liable to pay compensation?
- 4) To what relief?

7. During the course of the trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A5, X1 and X2 were marked. On behalf of the second respondent, R.W.1 was examined and Ex.B1 was marked.

8. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the auto, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.1,10,000/- with interest at 7.5% per annum, directing the respondent Nos.1 and 2 jointly and severally deposit the compensation within one month from the date of the award. Feeling aggrieved by the judgment and award passed by the Tribunal, the second respondent preferred the appeal.

9. Heard Sri P.Bhanu Prakash, learned counsel for the second respondent—insurance company and Sri T.C.Krishnan, learned counsel for the claimant.

10. Learned counsel for the insurance company submitted that the Tribunal wrongly fastened the liability on the second respondent even though the driver of the car was not having driving licence as on the date of the accident. He further submitted that the Tribunal failed to consider the recitals of charge sheet (Ex.A3) and wrongly fastened the liability on the second respondent. ***Per contra***, learned counsel for the claimant submitted that in the absence of positive evidence, it is not safe to place reliance on the recitals of charge sheet. He further submitted that the burden of proof lies on the second respondent to establish that the driver of the car was not having valid and effective driving licence as on the date of the accident.

11. Now the point that arises for consideration in this appeal is:

Whether the first respondent had violated the terms and conditions of the policy by entrusting the car to the driver, who was not having driving licence?

Point:

12. Basing on the oral, documentary evidence and other material available on record, the Tribunal, on issue No.1, arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the car. The Tribunal has assigned cogent and valid reasons to its finding on issue No.1. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Therefore, this court is of the considered view that the accident occurred due to rash and negligent driving of the driver of the car, which resulted in injuries to the petitioner.

13. Learned counsel for the second respondent submitted that the second respondent is not challenging the quantum of compensation

awarded by the Tribunal. In view of the submission made by the learned counsel for the second respondent, this court is not inclined to express any opinion with regard to the quantum of compensation awarded by the Tribunal.

14. As per the oral testimony of R.W.1, the driver of the car was not having licence to drive the car. In the cross-examination, R.W.1 denied the suggestion that the driver of the car was having valid driving licence at the time of the accident. The second respondent has taken a specific plea in the counter that the driver of the car was not having licence to drive the car. Learned counsel for the second respondent is placing reliance on the recitals of charge sheet (Ex.A3) to substantiate its stand. It is not out of place to extract the relevant portion in the charge sheet, which reads as under:

“At the time of arrest, the accused not produced driving licence”.

A perusal of the record reveals that the accused-driver of the car was arrested on 20.3.2006.

15. Learned counsel for the second respondent has drawn my attention to the decision of Hon'ble apex court in **Gopal Krishnaji Ketkar v Mohamed Haji Latif**^[1]. As per the principle enunciated therein, a party who is in possession of the document fails to produce the same, the court can draw adverse inference. Admittedly the driver of the car is not a party to the proceedings. Therefore, the decision cited by the learned counsel for the second respondent is no way helpful to the second respondent. The second respondent did not issue notice directing the first respondent to produce driving licence of the driver of the car. The second respondent has not taken any steps to examine the driver of the car to substantiate its stand. The court ought not to give any finding basing on the allegations made in the charge sheet without examining the Investigating Officer or other connected persons. It is not mentioned in the charge sheet that the driver of the

car was not having driving licence. Mere non-production of driving licence by the driver of the crime vehicle, at the time of the arrest, is not a valid ground to draw an adverse inference. The Motor Vehicles Act is a beneficial legislation. When two views are possible, basing on the material available on record, the Tribunal or court has to take the view, which is in favour of the claimant.

16. A perusal of the charge sheet clearly indicated that the Investigating Officer has not evinced any interest to ascertain whether the driver of the car was having licence to drive the car or not. Mere taking of a plea in the counter by itself would not amount to proof of the stand taken by the insurance company. The burden of proof lies on the second respondent to establish that the driver of the car was not having valid and effective driving licence in order to absolve its liability. In the instant case, the second respondent has not adduced any evidence, much less legally admissible evidence, to establish that the driver of the car was not having valid and effective driving licence so as to absolve its liability. The Tribunal, after considering the material available on record, gave a specific finding that the first respondent has not violated the terms and conditions of the policy. I am in agreement with the finding recorded by the Tribunal. In the light of the foregoing discussion, I am unable to accede to the contention of learned counsel for the second respondent that the first respondent has violated the terms and conditions of the policy. Accordingly, the point is answered.

17. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 17.3.2015
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[\[1\]](#) AIR 1968 SC 1413