

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.880 of 2009

JUDGMENT:

1 Dissatisfied with the judgment and award dated 31.10.2008 passed in M.V.O.P.No.477 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District & Sessions Judge, Guntur, wherein and whereby an amount of Rs.1,80,150/- was awarded as compensation by fastening the liability on the owner of the crime vehicle, the claimant filed the present appeal.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

3 The facts leading to filing of the present appeal, briefly, are as follows:

4 On 11.10.2005 the petitioner was engaged as cleaner in the lorry bearing No.AP 16 U 0594. On the same day at 11.30 PM, the petitioner was removing the knots of the lorry for unloading the goods, in the meanwhile, the driver of the lorry drove the same in a rash and negligent manner, due to which, the petitioner fell down from the lorry and sustained injuries on various parts of his body. The accident occurred due to the rash and negligent driving of the driver of the lorry against whom, the Station House Officer, Nagarampalem Police Station registered a case in Cr.No.24 of 2006 for the offence punishable under Section 337 IPC. In the said accident, the petitioner sustained injuries and took treatment as inpatient in Peoples Trauma and Emergency hospital, Guntur for a long time and thereby lost his income. By the date of accident, the petitioner was aged about 40 years and used to earn Rs.3,000/- per month as cleaner of the lorry. Hence the petitioner filed the claim petition seeking compensation of Rs.2.00 lakh from the respondents jointly and severally. The lorry bearing No.AP 16 U 0594 which belongs to the first respondent was insured with the second respondent as on the date of accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

5 First respondent remained *ex parte*. Second respondent filed written statement denying the material averments inter *alia* contending that the lorry in question was not involved in the accident on the date of the alleged accident.

The first respondent did not inform the factum of accident to this respondent for the reasons best known to him. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. The driver of the lorry was not having valid and effective driving licence as on the date of accident. Therefore, this respondent is not liable to pay compensation to the petitioner. Hence the petition may be dismissed.

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

- i. Whether the accident occurred due to rash and negligent driving of driver of lorry bearing No.AP 16 U 0594?
- ii. To what compensation the petitioner is entitled and from whom?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.10 were marked. On behalf of the respondents no oral or documentary evidence was let in.

8 On appreciation of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 16 U 0594 and allowed the petition in part by awarding compensation of Rs.1,80,150/- with interest at 7.5% p.a from the date of filing of the petition till the date of realisation by fastening the liability only on the owner of the crime vehicle i.e. first respondent. Feeling aggrieved by the said finding of the Tribunal in fastening the liability on the first respondent alone, the petitioner filed the present appeal.

9 The learned counsel for the petitioner submitted that the Tribunal ought to have fastened the liability on the 2nd respondent – insurer instead of the first respondent. He further submitted that the findings recorded by the Tribunal are based on assumptions and presumptions.

10 Though notices were served, the respondent Nos.1 and 2 did not choose to appear before this Court. Hence I am inclined to proceed with the matter on merits.

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

“Whether the Tribunal committed error in not fastening the liability on the 2nd respondent?”

Point:

12 As per the finding of the tribunal, the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 16 U 0594. The respondents did not choose to file appeal or cross objections challenging the finding of the Tribunal on issue No.1. Therefore, the finding of the Tribunal on issue No.1 has become final. Hence, there is no necessity to discuss the said issue elaborately in this appeal. I am fully agreeing with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 16 U 0594.

13 As per the averments made in the petition, the accident occurred on 11.10.2005. The petitioner filed a private complaint before the learned Judicial Magistrate of I Class, Special Mobile Court, Guntur and the same was referred to the Station House Officer, Nagaram Palem, Guntur on 27.01.2006. The Tribunal has not fastened the liability on the 2nd respondent disbelieving the version put forth by the petitioner. Admittedly, the accident occurred on 11.10.2005 near KKR Plaza, Nagaram Palem. If really the accident occurred as pleaded by the petitioner, what prevented him to lodge a complaint to the Station House Officer, Nagaram Palem Police station on the same day? In the charge sheet it is mentioned that the Station House Officer, Nagaram Palem police station has not registered the case despite the petitioner lodged a complaint on 04.11.2005. It seems that the petitioner has taken this plea in order to cover up the laches on his part. A perusal of Ex.A.1 reveals that the Station House Officer received a copy of the private complaint from the Special Mobile Court, Guntur on 27.01.2006. The petitioner has not assigned cogent and valid reasons for not lodging the complaint for a period of three months. Mere delay in lodging the complaint by itself is not a sufficient ground to discard the version put forth by the complainant. The Court has to take into consideration the conduct of the parties while appreciating the material available on record. As per the allegations made in the petition, the first respondent who was the owner of the lorry bearing No.AP 16 U 0594 drove the same in a rash and negligent manner. It is an admitted fact that the petitioner is none other than the own brother of the first respondent. If really the version put

forth by the petitioner is true and correct, what prevented the first respondent to file the counter admitting the factum as well as manner of accident? But for the reasons best known to him, the first respondent has not chosen to file counter in the O.P. Except the self-serving testimony of P.W.1, there is no other convincing evidence to establish that he was working as cleaner in the crime lorry. If really the petitioner was working as cleaner in the lorry as on the date of accident, certainly, the first respondent would have filed counter supporting the version of the petitioner. Even otherwise, the first respondent might have entered into the witness box and supported the version of the petitioner. In order to claim compensation from the insurance company, the possibility of distortion of facts by the petitioner even though he sustained injuries in some other way cannot be ruled out completely. The Tribunal or the Court has to take more care while deciding this type of cases.

14 The very purpose of the Motor Vehicles Act is to provide financial assistance to the victims of road accident. That does not mean that the Tribunal should allow the petition without any scrutiny. It is the duty of the Tribunal or the Court to protect the interest of the insurance companies which are dealing with public money. It is not uncommon to file frivolous petitions in order to claim compensation

15 The delay in lodging the complaint creates any amount of doubt with regard to the version put forth by the petitioner that he was working as cleaner, as rightly observed by the Tribunal. The Tribunal has taken much pain in order to ascertain the truth. The Tribunal has assigned cogent and valid reasons to its findings. There are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal. The appeal lacks merits and bonafides.

16 Hence the appeal is dismissed. No order as to costs. As a sequel, miscellaneous petitions, pending in this miscellaneous appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 4th March, 2015.

Kvsn