

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.917 of 2009

JUDGMENT:

This appeal is filed challenging the judgment and award, dated 20.10.2008 passed in O.P.No.114 of 2007 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, at Nalgonda.

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the appeal, in brief, are as follows:

On 28.06.2006, the petitioner and his wife were proceeding to Chandur from Nalgonda on Hero Honda Motorcycle bearing No.AP 24 M 452 on the extreme left side of the road. When they reached outskirts of Gaddamvari Yedavalli village, the rider of the Hero Honda Motorcycle Splendor bearing No.AP 24 L 7861 (herein after referred as 'crime vehicle') came from opposite direction in a rash and negligent manner and hit the motor cycle of the petitioner. The accident occurred due to the rash and negligent driving of the rider of the crime vehicle against whom the Station House Officer, Kanagal registered a case in Crime No.56 of 2006 under Section 337 and 338 IPC. Due to the accident, the petitioner sustained injuries on various parts of the body and took treatment as inpatient and spent huge amount towards medicines and treatment. By the time of accident, the petitioner was earning more than Rs.10,000/- per month by doing business. The respondent No.1 is the owner of the crime vehicle, which was insured with the second respondent company. Therefore, respondents 1 and 2 are jointly and severally liable to pay the compensation to the petitioner. Hence, the petitioner filed the claim petition claiming compensation of Rs.1,50,000/-.

4. The first respondent filed counter denying the manner and the factum of accident. This respondent was having valid and effective driving licence to drive the motorcycle as on the date of accident. The vehicle involved in the accident was insured with the second respondent vide policy No.0027 9148 with effect from 03.01.2006 to 02.01.2007. The second respondent alone has to pay the compensation to the petitioner.

5. The second respondent filed a counter denying the material averments made in the petition *inter alia* contending that the rider of the motor cycle was not having valid effective driving licence to drive the crime vehicle as on the date of accident. The crime vehicle of the first respondent was insured with this respondent company. This respondent is not aware of the criminal proceedings launched in this matter. The first respondent did not inform the factum of accident to this respondent in collusion with the petitioner. The amount of compensation claimed by the petitioner is highly excessive and exorbitant. The accident occurred due to the negligence on the part of both vehicles drivers. Hence, the petition may be dismissed.

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

1. Whether the claimant sustained any injuries due to rash and negligent driving of Hero Honda bearing No.AP - 24 - L 7861?
2. Whether the claimant is entitled for compensation, If so, what amount and from whom?
3. To what relief?

7. During the course of trial, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A.1 to A.11 and Ex.C1 were marked. On behalf of the respondents, no oral evidence was adduced but Ex.B1 was marked.

8. Basing on the oral and documentary evidence and other material available on record, the Tribunal dismissed the petition holding that the petitioner failed to prove that he sustained injuries due to rash and negligent driving of the rider of the crime vehicle. Being aggrieved by the judgment and award of the Tribunal, the claimant preferred the present appeal.

9. The respondent Nos.1 and 2 having received notices in the appeal, did not choose to appear. Hence, this Court is inclined to dispose of the matter on merits. Heard Sri Suresh Kumar appearing for Sri V.Narasimha Rao, learned counsel for the petitioner/appellant.

10. The predominant contention of the learned counsel for the petitioner is that the finding recorded by the Tribunal is not sustainable either on facts or on law.

11. Now the points that arise for consideration in this appeal are as follows:

1. Whether the accident occurred due to the rash and negligent driving of the rider of the Hero Honda splendor bearing No.AP 24 L 7861?
2. Whether the petitioner is entitled for compensation, if so, to what amount and against whom?

12. To prove the factum of accident, the petitioner examined himself as P.W.1. As seen from the testimony of P.W.1, on the date of accident himself and his wife were proceeding to Chandur from Nalgonda on a motor cycle bearing No.AP 24/M 452. When they reached outskirts of Gaddamvari Yedavalli village, the rider of the crime vehicle bearing No.AP 24/L-7861 had driven the same in a rash and negligent manner and hit their motorcycle. If the testimony of P.W.1 is taken into consideration, the accident occurred due to the rash and negligent driving of the rider of the crime vehicle. A perusal of Ex.A1 reveals that the Station House Officer, Kanagallu registered a case in Crime No.56 of 2006 under Sections 337 and 338 IPC on 03.07.2006. As per the

recitals of Ex.A3 charge sheet, the accident occurred due to the rash and negligent driving of the rider of the crime vehicle. The oral testimony of P.W.1 is fully supported by recitals of Ex.A1 FIR and Ex.A3 charge sheet so far as the manner of the accident is concerned. In the cross-examination of P.W.1, nothing is elicited to shake his testimony so far as the factum of accident is concerned. Second respondent's counsel did not put a suggestion to P.W.1 that the crime vehicle bearing No.AP 24/L-7861 was not involved in the accident. In the cross-examination of P.W.1, nothing is elicited to support the version of the respondents.

13. The Tribunal dismissed the petition on the ground that there is absolutely no material to show that it was the Hero Honda Splender Motorcycle bearing No.AP 24/L 7861 which caused the accident resulting injuries to the petitioner. The respondents have not taken any specific plea in the counter that Hero Honda Splender AP 24/L 7861 did not involve in the accident on 28.06.2006. As observed earlier, the respondent counsels have not put a suggestion to P.W.1 that the crime vehicle bearing No.AP 24/L 7861 did not involve in the accident on 28.06.2006. The respondents have not placed any material before the Tribunal to establish that the crime vehicle did not involve in the accident. It is a settled principle of law that the findings recorded by the Court or a Tribunal must be based on some material. The Tribunal should not assume or pressure the things and arrive at a conclusion without any material. It is not the case of the respondents that the crime vehicle was not involved in the accident. In such circumstances, it may not be permissible to the Court or the Tribunal to arrive at a conclusion that the crime vehicle was not involved in the accident. There is no doubt that there is a delay of six days in lodging the complaint. Mere delay in lodging the complaint by itself is not a sufficient ground to disbelieve the version of the claimants provided the claimants produce sufficient material. In the instant case, the petitioner has adduced cogent and convincing evidence with regard to

the manner and factum of accident. Mere delay in lodging the complaint itself is not a valid ground to dismiss the claim petition in view of the principle enunciated in **MANNE SRINIVASA RAO v. REGALLA UMA AND ANOTHER**^[1]. As per the principle enunciated in **G. JAYALAXMI AND OTHERS v. SYED ANWAR HUSSAIN QUADRI AND OTHERS**^[2] proceedings before Claims Tribunal under Motor Vehicles Act being summary in nature, strict proof of evidence is not essential to prove the accident in a claim petition filed for compensation. As per the principle enunciated in **PRAKASH CHANDRA BISWAS v. NEW INDIA ASSURANCE CO.LTD.AND OTHERS**^[3] claimant is not required to prove his case beyond shadow of reasonable doubt.

14. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited supra, I am of the considered view that the finding of the Tribunal is not sustainable either on facts or on law.

15. In the light of the foregoing discussion, I have no hesitation to hold that the accident occurred due to the rash and negligent driving of the crime vehicle, which resulted injuries to the petitioner. Accordingly, point No.1 is answered in favour of the petitioner/appellant.

16. **Point No.2:** As per the testimony of P.W.1, he sustained injuries on various parts of the body and took treatment for long time. As per Ex.A2 wound certificate, the petitioner sustained the injuries, which are as follows:

1. Fracture of Right Radius.
2. Fracture of Right Ulna.
3. Fracture of 3rd, 4th & 5th Meta Carpals.
4. Fracture of Right PP Index, Middle, Ring & Little Fingers(10 Nailing applied).

As per the testimony of P.W.2, the petitioner sustained three fractures. He treated the petitioner by applying 'k' wire. Due to fractures, the petitioner might have suffered a lot. Taking into consideration the nature of injuries sustained by the petitioner, I am inclined to grant an amount of Rs.30,000/- towards pain and suffering. As per the bills, the petitioner spent nearly Rs.20,000/- towards medicines. Having regard to the nature of injuries sustained by the petitioner, I am inclined to award an amount of Rs.20,000/- towards medicines. Due to fractures, the petitioner might not have attended to his works for a period of three months including the treatment period. Hence, I am inclined to award an amount of Rs.15,000/- towards loss of earnings. Absolutely there is no material on record to establish that the petitioner incurred permanent disability. Hence, the petitioner is not entitled to any amount under the head 'permanent disability'. The compensation awarded under various heads is as follows:

For Pain and suffering	Rs. 30,000/-
For medicines	Rs. 20,000/-
For loss of earnings	Rs. 15,000/-

17. The first respondent being the owner of the crime vehicle has to pay the compensation to the petitioner. Even as per the stand taken by the second respondent, the crime vehicle was insured with it as on the date of accident. Hence, the second respondent has to indemnify the liability of the first respondent. Therefore, respondents 1 and 2 are jointly and severally liable to pay the compensation. The petitioner is also entitled for interest at 7.5% per annum from the date of petition till the date of realisation. The respondents 1 and 2 are directed to deposit the amount within two months from the date of receipt of copy of this order.

18. In the result, the appeal is allowed in part granting compensation of Rs.65,000/- with interest at 7.5% per annum from the date of petition till the date of realisation. Respondents 1 and 2 are jointly and

severally liable to pay the compensation amount with interest within two months from the date of receipt of copy of this order. On such deposit, the petitioner is entitled to withdraw the entire amount. There shall be no order as to costs.

19. Consequently, Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

4th February, 2015
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[\[1\]](#) 2012(4) ALT 204

[\[2\]](#) 2012(6) ALT 474

[\[3\]](#) AIR 2010 CALCUTTA 19