

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1012 OF 2005

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JUDGMENT:

Aggrieved of the dismissal of the claim petition, by the order dated 17-11-2004 passed in M.V.O.P. No.641 of 2003, by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Court, Warangal, the petitioner preferred the instant appeal.

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

3. The facts in brief are that on 07.03.2003, the petitioner said to have boarded into an auto bearing No.AP09466 to go to M.G.M.Hospital, Warangal at about 10.30 a.m. When the said auto reached near Gopala Swamy Temple, since the driver of the auto driven it in a rash and negligent manner and applied sudden brakes, it turned upside down and the petitioner sustained fracture to left tibia and grievous injuries to medial aspect of left ankle and left leg. According to the petitioner, on the report given by one Ekkala Lingaiah, the Station House Officer, Matwada police station

registered a case in crime No.64 of 2003 under Section 337 I.P.C. against the driver of the auto and laid charge sheet under Section 338 I.P.C. after completion of investigation.

4. The petitioner also stated that he was shifted to Udaya Clinic, Hanamkonda, where he took treatment from 07.03.2003 and underwent surgical interventions to his left leg and steel plates were inserted. He was advised to take complete bed rest for three months. According to him, he

spent Rs.8,000/- for treatment. He sought total compensation of Rs.50,000/-.

5. Before the Tribunal, Respondent No.1/owner remained *ex parte*. Respondent No.2/insurer resisted the claim and required the petitioner to prove the manner in which the accident alleged to have taken place and other material allegations mentioned in the petition and sought to dismiss the claim.

6. The Tribunal based on the above pleadings framed three issues to fix responsibility for the accident.

7. In the enquiry before the Tribunal, the petitioner besides examining himself as P.W.1 examined Dr.G.Venkat Rao as P.W.2 and marked Exs. A1 to A12. The 2nd respondent-insurance company has not chosen to examine any witnesses nor filed any documents.

8. The Tribunal, on appraisal of evidence on record, on issue No.1, did not agree with the petitioner's version presented in the claim petition for the reason that the case sheet marked as Ex.A12 through P.W.2 contains that the petitioner stated to P.W.2 at the time of admission on 07.03.2003 that he sustained injuries due to collision of bike and tractor at 5.00 p.m. on 07.03.2003 and that the version given by P.W.1 before P.W.2 completely contradicts with the version in the claim petition. The Tribunal did not believe the version in Ex.A1-F.I.R. and the Ex.A3-charge sheet also by drawing an inference that the auto was planted for the purpose of claiming compensation and rejected the claim by dismissing claim petition.

9. It is the aforesaid order, which is under challenge in the instant appeal, contending in the grounds of appeal that the Tribunal ought not to have relied on the contents of Ex.A12-case sheet and ought to have relied on Exs.A2 and A3, which are the certified copies of F.I.R. and charge sheet, as the concerned police registered a case against the driver of the auto and filed charge sheet against him and, the Tribunal was not right in

recording a finding that the appellant did not receive injuries in the accident caused due to the auto turning upside down. It is also stated that the presumption drawn by the Tribunal that since the tractor had invalid insurance, the appellant filed O.P. claiming compensation as if he received injuries in auto accident is improper. Therefore, he sought to set aside the decree and to grant the amount claimed.

10. Heard Sri A.Prabhakar Rao, learned counsel for the appellant and Sri V.Sambasiva Rao, learned counsel for respondent No.2. Though, respondent No.1 was served with notice, none appears for him.

11. Perused the order and the evidence let in by the petitioner both, oral and documentary.

12. Learned counsel for the appellant submits that despite the fact that Exs.A1 to A3 reflect the rash and negligent driving of the auto driver resulting injuries to the petitioner, merely basing on the contents of Ex.A12, the Tribunal rejected the claim of the petitioner as not tenable and, therefore, sought to set aside the dismissal order.

13. On the other hand, learned counsel for respondent No.2 submits that the Tribunal recorded finding based on appreciation of evidence on record. Therefore, he sought to sustain the order under challenge in the instant case.

14. The scope of controversy in the instant appeal is very limited. The question involved is whether the recitals in Ex.A12 gain precedence over the version recorded in Exs.A1 and A3. It is no doubt true, in Ex.A1 the informant, E.Lingaiah mentioned that the accident has taken place on 07.03.2003 at 10.30 p.m. near Gopala Swamy Temple. On account of auto turning upside down, the petitioner sustained fractures to his left hand and right shoulder and other injuries. It is also recorded therein that along with them, there is another person and for the delay in lodging the complaint, he assigned the reason that through out the previous day he was in the

hospital and there were none to send a complaint. That was the reason he has lodged the complaint on the next day at 2.00 p.m. Thus, it is clear from Ex.A1 that the complaint was lodged at 2.00 p.m. on 08.03.2000 by one E.Lingaiah. But, however, the reason assigned by him for the inordinate delay in lodging Ex.A1, complaint is not convincing. Soon after the accident it being a medico legal case, the doctor who treated him if he was in private hospital would have sent intimation to the concerned police for which there is no explanation at all. It is no doubt true, he has also mentioned that there was another person travelling in the auto but his name was not to be found anywhere. But it is not mentioned whether such person also sustained injuries or not. However, the delay in lodging Ex.A1, complaint cannot be side lined in the peculiar facts occurring in the instant case when examined in the light of Ex.A12 contents. Ex.A2, injury certificate dated 08.03.2000 was issued on the request made by the police. Based on the same, the petitioner examined P.W.2, who mentioned contents of Ex.A12 based on the version of P.W.1. The contents therein would reflect that the petitioner came with pain over left lower part of his leg and he sustained injury when accident taken place between the 'bike' and 'tractor' at '5.00 p.m.' on 07.03.2003. Thus, these recitals make it abundantly clear that P.W.2 has no personal interest to make wrong entries in Ex.A12 and based on the version given by P.W.1, who was conscious to make a statement, the said version was recorded. There is absolutely nothing in the evidence of P.W.1 to explain away the said version spoken to by P.W.1 while making entries in Ex.A12.

15. On the other hand, when examined the evidence given by P.W.1, he categorically admits that he informed the doctor that he sustained injuries in the motor accident. Even the evidence of P.W.2 reflects that P.W.1 informed the cause of injury at the time of his admission. Thus, it is clear from these admissions made by P.W.1 and P.W.2 that what was stated by P.W.1 to P.W.2 at the time of his admission into P.W.2's hospital was true and there is no need to rebut the very recitals recorded by P.W.2 on the basis of the statement made by P.W.1. It is no doubt true, that the charge sheet was laid against the auto driver and P.W.1's name finds place as one of the witnesses in the charge sheet.

But, certainly, the recitals in Ex.A3, charge sheet would not gain precedence over the very version given by P.W.1 to P.W.2 and that that has been the reason, the Tribunal by drawing presumption against the petitioner recorded a finding that the auto has been planted as the tractor driver was not having driving licence. As regards the second part recorded by the Tribunal so far as planting of auto as the crime vehicle is concerned, it is based on the version occurring in Ex.A12 proved through the evidence of P.W.1 and supported by the evidence of P.W.2 in his cross examination. Therefore, the finding recorded by the Tribunal that the crime vehicle was substituted in place of the original crime vehicle does not suffer from any legal infirmity warranting interference. Hence, the finding is confirmed. The appeal is devoid of merit.

16. The appeal is therefore, dismissed. No order as to costs.

17. Consequently, miscellaneous applications, if any, filed in the instant appeal, shall stand closed.

A. SHANKAR NARAYANA, J

March 19, 2015

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