

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 801 of 2006

Judgment:

The instant appeal is preferred by the petitioner, in OP No.1066 of 2001, having got aggrieved of the order, dated 23.11.2005, passed by the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Nizamabad (for short 'the Tribunal'), whereby and whereunder the claim of the petitioner for Rs.2,00,000/- as compensation, laid under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules 1989, for the injuries sustained in a road accident, was dismissed in toto.

2. For the sake of inconvenience, the parties hereinafter referred to as arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that on 19.12.2000 at about 8.30 AM, the petitioner, who was working as a Teacher in a Government School and resident of Kanteshwar locality in Nizamabad town, was proceeding towards bus stand from his locality in order to go to Tungini village, which is a place of his working and, when he reached near Kanteshwar temple, a motor cycle bearing registration No.AP-25-E-1524, driven in a rash and negligent manner dashed him, due to which, he fell down and sustained fracture to his right knee joint and other injuries to his person. According to him, he was taken to Government Hospital, Nizamabad, and from there he was shifted to Hyderabad for further treatment and he incurred an expenditure of Rs.30,000/- towards medicines, special diet and attendant charges and Rs.10,000/- for future treatment and drawing a salary of Rs.4,000/- per month sought a sum of Rs2,00,000/-, though he estimated the compensation at Rs.23,42,000/-, with interest

at 24% p.a., from the respondents who are the owner and insurer of the motor cycle respectively.

4. Both the respondents filed their separate written statements denying the material allegations mentioned by the petitioner, while raising other pleas by the second respondent in its written statement seeking protection under Sections 147, 149 and 170 of the Act sought for dismissal of the claim petition against it.

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5. The Tribunal, based on the said pleadings, framed the following three issues in order to fix the responsibility for the accident.

“1. Whether the accident has taken place due to rash and negligent driving of the vehicle bearing No.AP-25-E-1524 by its driver?

2. Whether the petitioner is entitled for compensation. If so to what just amount and from which of the respondents?

3. To what relief?”

6. During enquiry, the petitioner examined himself as PW.1, besides examining Dr. L. Ramulu as PW.2 and marked Exs.A1 to A11 and Ex.C1 the case sheet. On behalf of the second respondent – Insurance Company, the copy of policy was marked as Ex.B1 and no witnesses were examined.

7. The Tribunal taken up discussion on issues 1 and 2 and disbelieved the stand taken by the petitioner to substantiate his claim, finding inconsistent evidence of PW.2 and Ex.A3 – injury certificate not disclosing the petitioner sustaining any fracture, the failure of the petitioner to file injury certificate said to have issued by the Government Headquarters Hospital, Nizamabad, and also not making any efforts to call for the records from the said hospital to prove that he was taken to that hospital for treatment of the injuries said to have sustained in the accident, non-examination of the Medical Officer of Dr.Hari Prasad’s Hospital, the circumstance that Ex.C1 called for from Satya Kidney Center, Hyderabad, reflecting that he was admitted on 20th December 2000 and discharged on 22nd December 2000 and that he was treated for renal problem, but not for the injury on the knee joint as mentioned in the injury certificate - Ex.A3 issued by Dr. L. Ramulu and that neither Ex.A3 – injury

certificate nor Ex.C1 – case sheet discloses that the said injuries were caused in a motor vehicle accident and, thus, all these circumstances would go to suggest that the petitioner's treatment in Satya Kidney Center, Hyderabad, is for renal ailment and trying to say that he sustained injuries in a motor vehicle accident and those injuries are related to renal problem and lastly, the very fact that the complaint was lodged only after 40 days, though, he was discharged from the hospital within three days as revealed by Ex.C1- case sheet and non examination of one Vinod Kumar an alleged eye witness to the accident and, thereby, arrived at the conclusion that the petitioner planted the motor cycle to make a false claim for compensation by colluding with the owner of the motor cycle who is the first respondent herein and, consequently, dismissed the claim petition with costs.

8. It is the aforesaid order which is under challenge in the instant appeal by the petitioner contending in the grounds of appeal that the Tribunal failed to see that he sustained grievous injury which is fracture of the right knee joint and incurred permanent disability. It is also stated that the Tribunal has not properly appreciated the evidence and over looked the fact that only due to rash and negligent driving of the first respondent the accident had occurred and discarded Exs.A1 and A2 the FIR and charge sheet and the Tribunal ought not to have laid emphasis on the delay in filing the FIR and to take it as a ground to dismiss the very claim petition. It is also stated that the Tribunal also has not properly appreciated Exs.A3 and A4 and the evidence of PW.2 and Exs.A5 to A11 which all would positively prove the petitioner's claim for compensation and, therefore, sought to set aside the order and decree and grant the compensation amount claimed by him.

9. Heard Sri M. Raja Malla Reddy, learned counsel for the appellant, and Smt. A. Anasuya, learned counsel for the second respondent – Insurance Company. Despite service of notice on the first respondent none appears for him.

10. Perused the order and the evidence let in by the petitioner, both, oral and documentary. Learned counsel for the appellant tendered arguments on the basis of grounds as stated in the instant appeal, whereas learned counsel for the second respondent – Insurance Company supported the dismissal order passed by the

Tribunal.

11. Now the short question that arises for consideration is whether the order under challenge cannot be sustained?

12. The reasons for dismissal of the claim petition assigned by the Tribunal were narrated herein above, while referring to the order passed by the Tribunal. As seen from the evidence on record and the stand taken by the petitioner, the petitioner alleges that he sustained an abrasion over the right knee joint and he was initially treated in Government Headquarters Hospital, Nizamabad, and from there he was shifted to Satya Kidney Center, Hyderabad, and treated under Dr. Raghavender Reddy in the said hospital. Admittedly, there is delay of 40 days in lodging complaint by the petitioner. The said delay has to be construed as inordinate delay in lodging the FIR. There is absolutely no explanation as to why such long delay has occasioned in reporting the accident to the police, despite the fact that the petitioner was working as a Teacher and was treated only for three days as inpatient. On the other hand, the said delay, certainly, gives rise to any amount of suspicion in planting the accident vehicle as an after thought for the reasons that would be adverted to hereinafter.

13. Firstly, the vital circumstance being that the petitioner has not filed any certificate issued by the Government Headquarters Hospital, Nizamabad, despite his assertion that he was taken to Government Hospital, Nizamabad, initially and treated there and then referred to Satya Kidney Center, Hyderabad. The true extract of the accident register, if not the medical certificate of the Government Headquarters Hospital, Nizamabad, would unravel the truth in substantiating the claim of the petitioner. When the petitioner failed to submit the same, it gives rise to an inescapable inference adverse to the claim of the petitioner.

14. The second circumstance is that, though, the petitioner asserted that he fell unconscious soon after he sustained injuries, but the evidence of PW.2 Dr L. Ramulu does not disclose that he was brought in unconscious state. Third, the non-

examination of Dr. Hari Prasad, who alleged to have treated him at Hyderabad in Satya Kidney Center, so as to prove that the treatment given by him relates to the injury sustained by the petitioner in the alleged accident. Fourth, Ex.C1 – case sheet summoned from Satya Kidney Center, Hyderabad, would only disclose that he was treated for renal problem, but not for any injury on knee joint and fifth, that neither Ex.C1 nor Ex.A3 would show that he met with road accident and sustained injury. The other circumstances which were pointed out by the learned Tribunal also stand adverse to the case of the petitioner. Thus, the conclusion arrived at by the Tribunal, based on the finding recorded by it that the delay of 40 days occurred only to plant the motor cycle in collusion with the first respondent – owner of the motor cycle, cannot, therefore, be faulted with, as it is based on appreciation of evidence on record and the probabilities derived from the proved facts. Therefore, there is absolutely no merit in the instant appeal, consequently, confirming the order and decree passed by the Tribunal, the instant appeal is dismissed.

15. Accordingly, the appeal is dismissed. There shall be no order as to costs.

16. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 02.04.2015

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