

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.1182 of 2009

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act by the claimant challenging the judgment and award dated 03.02.2005 passed in M.V.O.P. No.1889 of 1999 on the file of the III Additional District Judge, Visakhapatnam.

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 petition, in brief, are as follows: On 24.7.1998 at about 4.10 P.M., the petitioner was proceeding to CDR Hospital from Jagadamba junction, Visakhapatnam on a scooter bearing No.AP 31H 4416. When he reached Court junction near Green Park Hotel, first respondent came, on motor cycle bearing No.AP 3E 2349, in opposite direction in a rash and negligent manner and hit the scooter of the petitioner. The accident occurred due to the rash and negligent riding of the motor cycle by the first respondent. The Station House Officer, II Town Traffic Police Station, Visakhapatnam registered a case against the petitioner in Crime No.43 of 1998 under Section 338 IPC. Due to the accident, the petitioner sustained grievous injuries and took treatment as inpatient in CDR Hospital for one week. By the time of the accident, the petitioner is working as Senior CT Technician and Programmer in CDR Hospital, Visakhapatnam. The first respondent is the rider of the motor cycle, second respondent is the insurer, and third respondent is the owner of the motor cycle. During the pendency of the petition, third respondent died and respondent Nos.4 and 5 were brought on record as his legal representatives. Hence, the respondents are jointly and severally liable to pay compensation of Rs.1,00,000/- to the petitioner with interest and costs.

4. The first respondent filed counter denying all the averments made in the petition, *inter alia*, contending that the petitioner himself drove the scooter in a rash and negligent manner, due to which the accident occurred. Absolutely there was no negligence on the part of this respondent. The petitioner, in collusion with the Hospital authorities, obtained wound certificate. This respondent filed M.V.O.P.No.1294 of 1998 on the file of the III Additional Judge, Visakhapatnam and the same was settled in Lok Adalat. Hence, the petition may be dismissed. Respondent

Nos. 4 and 5 filed memo adopting the counter filed by the first respondent.

5. The second respondent—insurance company filed counter denying all the averments made in the petition, *inter alia*, contending that on receipt of the summons in this case, this respondent appointed an investigator and obtained all the criminal case records. As per the records, crime No.43 of 1998 under Section 338 IPC was registered against the petitioner in respect of the accident that occurred on 24.7.1998. As per the criminal records, the petitioner himself drove the scooter in a rash and negligent manner and hit the motor cycle of the first respondent. Hence, the petition against this respondent may be dismissed.

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

1. Whether the petitioner sustained injuries due to the rash and negligent driving of the Motor cycle bearing No.AP 03E 2349 on 24.7.98 at 4.10 P.M. by the first respondent?
2. Whether the petitioner is entitled to receive any compensation and if so from which of the respondents?
3. 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 A6 were marked. On behalf of the second respondent, R.W.1 was examined and Exs.B1 to B10 were 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 scooter by the petitioner and dismissed the petition. Feeling aggrieved by the judgment and award, the petitioner preferred the present appeal.

9. Heard Smt.N.(P) Anjana Devi, learned counsel for the petitioner, Sri Jayanti S.C. Sekhar, learned counsel for the respondent Nos.1, 4 and 5 and Sri B.Narayana Reddy, learned counsel for the second respondent – insurance company.

10. The contention of the learned counsel for the petitioner is three fold:

- (1) The Tribunal failed to consider that the first respondent in collusion with the Police foisted false case against the petitioner;
- (2) The first respondent in collusion with the insurance company personnel settled the matter in Lok Adalat even prior to the first appearance of the petitioner; and
- (3) The Tribunal failed to consider the fraud played by the first respondent.

Per contra, learned counsel for the respondent No.2 and learned counsel for the respondent Nos.1, 4 and 5 submitted that the accident occurred due to the rash and negligent riding of the scooter by the petitioner and there was no negligence on the part of the rider of the motor cycle i.e., first respondent. They further submitted that the Tribunal has assigned cogent and valid reasons to its findings.

10. Now the points that arise for consideration in this appeal are:

- (1) Whether the accident occurred due to the rash and negligent riding of the motor cycle by the first respondent or not?
- (2) Whether the petitioner is entitled to compensation and if so, to what amount, and from which of the respondents?

Point No.1:

11. As per the testimony of P.W.1, on the date of the accident, the first respondent had driven the motor cycle bearing No.AP 3E 2349 in a rash and negligent manner and hit the scooter of the petitioner. It is not in dispute that the accident occurred on 24.7.1998 at 4.10 P.M. near Green Park Hotel, Visakhapatnam. The oral testimony of R.W.1 coupled with Ex.B2 reveals that the Station House Officer, II Town Traffic Police Station, Visakhapatnam registered a criminal case against the petitioner under Section 338 IPC. The concerned SHO investigated into the matter and filed the charge sheet against the petitioner (Ex.B5). A perusal of Ex.B6 certified copy of the judgment reveals that the petitioner faced the trial in C.C.No.434 of 1998 on the file of V Metropolitan Magistrate, Visakhapatnam. A perusal of the record further reveals that the first respondent (R.W.1) filed M.V.O.P. No.1294 of 1998 and the petitioner has received summons in that M.V.O.P. The fact remains that even after settlement of M.V.O.P. No.1294 of 1998 in Lok Adalat, the petitioner did not take any steps for setting aside the award passed in M.V.O.P. No.1294 of 1998.

12. The material available on record clinchingly establishes that no criminal case was registered against the first respondent. If really the accident occurred as pleaded by the petitioner, certainly concerned Police might have registered a criminal case against the first respondent. The oral testimony of R.W.1 coupled with Exs.B1 to B10 clearly reveals that there was no rashness or negligence on the part of the first respondent to cause the accident. Establishment of rash and negligent act on the part of the driver of the crime vehicle is *sine qua non* to claim compensation under Section 166 of the Motor Vehicles Act. Admittedly the petitioner filed the

petition under Section 166 of the M.V. Act. The burden of proof lies on the petitioner to prove rash and negligence on the part of the first respondent. Without proving the rash or negligent act on the part of the first respondent, the petitioner is not entitled to claim compensation under Section 166 of the M.V. Act.

13. Basing on the oral and documentary evidence available on record, the irresistible conclusion that can be drawn is that there was no rashness or negligence on the part of the first respondent. The material placed before this court falls short to establish that the accident occurred due to rash and negligent riding of the motor cycle by the first respondent. The Tribunal has considered oral and documentary evidence available on record in right perspective and arrived at a conclusion that there was no rashness or negligence on the part of the rider of the motor cycle i.e., respondent No.1. I am fully agreeing with the findings recorded by the Tribunal on issue No.1. There are no grounds much less valid grounds to set aside or modify the findings recorded by the Tribunal on issue No.1.

14. Having regard to the facts and circumstances of the case, I am of the considered view that there was no rashness or negligence on the part of the first respondent to cause the accident. Hence, the point No.1 is answered against the petitioner.

Point No.2:

15. Once the petitioner fails to prove the negligence on the part of the first respondent to cause the accident, there is no necessity to calculate the compensation amount. Point No.2 is answered accordingly. The appeal lacks merits.

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

T.SUNIL CHOWDARY, J

Date: 01.4.2015

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