

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

M.A.C.M.A. No.720 of 2009

JUDGMENT:

Aggrieved by the award dated 25.02.2008 in O.P.No.2753 of 2006 passed by the Chairman, MACT-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal'), the claimant preferred the instant MACMA.

2) Factual side, on 23.07.2004, when the claimant was travelling in an auto bearing No.AP 10V 0156, the driver drove the same in a rash and negligent manner and so the auto turned turtle and thereby the claimant fell down and sustained grievous injuries. The claimant took treatment in Priya Nursing Home, Nirmal between 24.07.2004 to 03.09.2004. It is averred that the accident was occurred due to the rash and negligent driving by the driver of the offending auto. Hence, the claimant filed O.P.No.2753 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short "MV Act") against respondents 1 and 2, who are the owner and insurer of the offending auto and claimed Rs.1,00,000/- as compensation.

a) 1st respondent remained *ex-parte*.

b) The 2nd respondent/ Insurance Company filed counter contending that driver of the auto was responsible for the accident he had no valid driving licence at the time of accident and 1st respondent has violated the conditions of policy.

c) During the course of trial PW1 was examined and Exs.A1 to A7 were marked on behalf of claimant. Ex.B1—copy of insurance policy was marked on behalf of 2nd respondent.

d) The Tribunal on appreciation of evidence though held that auto driver was responsible for accident and respondents 1 and 2 are liable to pay compensation, still dismissed the petition on the observation that the claimant failed to prove the injuries.

Hence, the appeal by claimant.

3) When the matter came for hearing there was no representation for appellant/claimant and R1. Hence, heard the arguments of Sri P.Harinath Gupta, learned counsel for R.2/ Insurance Company.

4) Learned counsel for R2 while supporting the award argued that, in this case the claimant failed to prove his injuries by examining the concerned doctor who treated him and therefore, the tribunal rightly dismissed his claim and so there is no need to interfere with the award.

5) The point for determination is:

“Whether the award passed by the Tribunal is factually and legally sustainable”

6) **POINT:** The case of the claimant is that he is a vegetables vendor and on 23.07.2004 at about 3 PM while he was travelling along with his vegetable bags in crime auto from Bowenpally market to Old Bowenpally and when the auto reached near a turning at diamond point hotel, the auto driver drove the vehicle in a rash and negligent manner and at high speed and thereby the auto turned turtle causing grievous injuries to his left leg. In order to prove the factum of accident and injuries he produced Exs.A1 to A7.

a) A perusal of the award would show that though Tribunal basing on the oral and documentary evidence has agreed with the claimant to the extent that the auto driver was responsible for the accident and respondents 1 and 2 who are the owner and insurer of the offending vehicle are liable to pay compensation in view of Ex.B1—policy was in force, however, dismissed the claim application on the main observation that the claimant failed to prove his medical record Ex.A4—treatment certificate and Ex.A6—medical bills by examining the concerned doctor who treated him. In this context, the Tribunal relied upon the judgment of this High Court reported in ***United India Insurance Company Limited vs. Mohd. Khaj Rasool Sayyed @ Mohd. Khaja Main Shaik***. The said finding is now being fulminated.

b) In the cited decision in **Mohd. Khaj Rasool Sayyed's** case (1 supra) a learned Judge of this High Court while answering the question—whether in the case of injuries and for compensation therefor, in the absence of medical, oral evidence in support of the documents which include the certificates and bills etc., can be accepted or relied on for the purpose of determining the quantum held as follows:

“In the absence of any such facility, it follows that the claimants have to produce medical evidence to prove and substantiate the nature of injuries, their grievousness and the disability sustained by them. Under the provisions of the Evidence Act, a distinction has been made between private and public documents. Section 74 of the Evidence Act defines a public document and the mode of proof thereof. Section 75 of the Evidence Act defines that all other documents other than those defined under Section 74 are private documents. Section 61 of the Evidence Act provides that the contents of the document have to be proved by primary or secondary evidence and Section 64 of the Act says that the documents must be proved by primary evidence except in the case as provided in the Act. Therefore, any document produced by any of the parties to the lis necessarily requires to be proved in the manner as provided under the Evidence Act. In most of these cases, the claimants are producing certificates and discharge cards etc., issued by the doctors and hospitals and also the bills in regard to the expenses incurred by them which require to be proved in the manner as provided under the Evidence Act. Mere marking of documents through the claimants does not amount to proof of the said documents as held in the decision reported in 1971 S.C. 1856. In most of these cases, no serious attempt is made to produce the necessary competent witnesses. It is urged on behalf of the claimants that once such certificates and the bills etc., issued by the doctors, it is not necessary to examine them. Such contention cannot be accepted as there is no distinction between medical evidence or other evidence in a Court of law as per the provisions of the Evidence Act. The said contention on behalf of the claimants is to be rejected on the face of it. Therefore, necessarily it has to be held that in the absence of any evidence in proof of the documents through proper witnesses, the documents

produced cannot be accepted nor can be relied on by the Court. Further, the medical evidence falls within expert evidence as contemplated under Section 45 of the Evidence Act. In the absence of expert's evidence, any amount of other evidence either oral or documentary is of no legal value. ”

Thus, in the above judgment the learned Judge opined that the medical record produced by the parties need to be proved through a medical expert. There is no demur regarding the above ratio. Coming to the instant case, as per Ex.A4—treatment certificate purported to be issued by Dr. K.Nageswar Rao of Priya Nursing Home, Normal would show the petitioner suffered the following injuries.

1. 15 x 10 cm. wound on the left ankle exposing the muscles and tendons and
2. Closed fracture lateral malleolus left.

c) The above two injuries were referred as grievous injuries. Besides Ex.A4 the claimant produced Ex.A5—prescriptions and Ex.A6—medical bills. However, the claimant has not examined the concerned doctor who treated and issued the above medical record. Hence, the Tribunal relying upon the above judgment did not consider Exs.A4 to A6 and ultimately held that claimant failed to prove his injuries and dismissed his claim petition.

7) In the considered view of this Court, the Tribunal is only partially correct. It is true that due to non-examination of the concerned doctor the claimant failed to prove the nature of injuries suffered by him. However, that is not the end of the matter. The pleadings and evidence i.e. Ex.A1—FIR, Ex.A2—charge sheet would show that due to rash and negligent driving of auto by its driver autorikshaw turned turtle. Admittedly, claimant was travelling in the auto as a passenger along with his vegetable bags. Having regard to the manner in which the accident took place i.e. the vehicle turning turtle, the possibility of claimant being passenger in the vehicle suffering minor injuries atleast cannot be ruled out. When the Tribunal accepted the oral and documentary evidence that the vehicle was driven in a rash and negligent manner and thereby it turned turtle, the same evidence can

be applied to take cognizance of the fact that claimant suffered minor injuries atleast. Therefore, though the claimant failed to prove the grievous nature of injuries, still from the facts and evidence it can be accepted that he suffered minor injuries to award him a reasonable compensation.

8) Having regard to the above discussion, the claimant is awarded **Rs.5,000/-** towards pain and suffering; **Rs.2,000/-** for medical and other incidental expenditure and also a sum of **Rs.3,000/-** for loss of past earnings on the premise that for a period of one month he was incapacitated to attend his vegetable business. Thus, in all, the claimant is entitled to **Rs.10,000/-** as compensation.

9) In the result, this MACMA is partly allowed and ordered as follows:

a) The appellant/claimant is awarded compensation of **Rs.10,000/-** with proportionate costs and interest @ 7.5% per annum from the date of OP till the date of realization.

b) The respondents 1 and 2 are directed to deposit the compensation amount within one month from the date of this judgment, failing which execution can be taken out against them.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 02.06.2015

Note: L.R. Copy to be marked Yes / No

Murthy