

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.M.P.No.3595 of 2014

in/and

M.A.C.M.A. No.3808 OF 2009

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JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the appellant/petitioner challenging the judgment and award, dated 29.09.2008, passed in M.V.O.P.No.11 of 2006 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-VIII Additional District and Sessions Judge (F.T.C.), Guntur (for short, 'the Tribunal').

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 present appeal are, briefly, as follows:

On 04.11.2004, the petitioner was proceeding to his house from Petrol Bunk in Vinukonda on motorcycle. When he reached near Old L.I.C. Office Cross Road, the driver of the Jeep bearing No.AHV 2503 came from Vinukonda in a rash and negligent manner and hit the petitioner's motorcycle. The accident occurred due to the rash and negligent driving of the driver of the jeep against whom the Station House Officer, Vinukonda Police Station registered a case in Crime No.242 of 2005 for the offence under Section 338 I.P.C. Due to accident, the petitioner sustained grievous injuries on various parts of the body and took treatment in Dr.Gogineni Sambasiva Rao Hospital, Vinukonda. By the time of accident, the petitioner was aged about 46 years and used to earn Rs.10,000/- per month. Due to injuries, the petitioner could not attend his work for long time and thereby, lost his income. The jeep bearing No.AHV 2503, which belongs to respondent No.1, was insured with respondent No.2 – Insurance Company with effect from 30.09.2004 to 29.09.2005. Therefore respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2,00,000/- to the petitioner. Hence, the petition.

4. Respondent No.1 remained *ex-parte*. Respondent No.2 filed written statement denying all the averments made in the petition *inter alia* contending that there was

no rashness or negligence on the part of the driver of the jeep to cause the accident. At the time of accident, the petitioner was crossing the road without observing the jeep. The accident occurred due to the rash and negligent driving of the petitioner himself, as such the petitioner is not entitled to claim compensation from this respondent. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

1. Whether the accident occurred due to rash and negligent driving of the driver of Jeep registration No.AHV 2503?
2. Whether the petitioner is entitled to compensation and if so, to what amount and against whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.8 were marked. On behalf of respondent No.2, no oral or documentary evidence was adduced.

7. On appraisal of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the petitioner failed to prove the *factum* of accident and dismissed the petition.

8. Feeling aggrieved by the judgment and award of the Tribunal, the petitioner preferred the present appeal.

9. Heard Sri B.Parameswara Rao, the learned counsel for the petitioner and Sri R.K.Suri, the learned Standing Counsel for respondent No.2 – National Insurance Company Limited.

10. Learned counsel for the petitioner submitted that the Tribunal failed to consider the oral testimony of PW.1 and recitals of Exs.A.1 and A.2 and dismissed the petition on erroneous grounds. He further submitted that the Tribunal has to take into consideration whether the petitioner has sustained injuries out of the use of motorcycle without insisting who drove the motorcycle at the time of accident.

11. Per contra, the learned Standing Counsel for respondent No.2 submitted that the petitioner created a version as if he sustained injuries in the accident that occurred on 04.11.2004. He further submitted that the material available on record falls short to establish that the petitioner sustained injuries out of use of the motorcycle.

12. Basing on the rival contentions, the points that arise for determination in this appeal are:

1. Whether the accident had occurred due to the rash and negligent driving of the driver of the jeep bearing No.AHV 2503 or not?
2. Whether the petitioner is entitled to compensation and if so, to what amount and against whom?

Point Nos.1 and 2:

13. During the pendency of the appeal, the petitioner filed M.A.C.M.A.M.P.No.3595 of 2014 to convert the Section of law from 166 to 163-A of the Act. It is needless to say that in order to claim compensation under the provisions of the Act, the petitioner has to establish that he has sustained injuries out of the use of the motor vehicle. Establishment of rash and negligence on the part of the driver of the crime vehicle is *sinequanon* to grant compensation under Section 166 of the Act. If the petition is filed under Section 163-A of the Act, the petitioner need not plead and prove the rash and negligence on the part of the driver of the crime vehicle. However, the insurer is entitled to establish that there was no rashness or negligence on the part of the driver of the crime vehicle even if the petition is filed under Section 163-A of the Act. In one way or other both Sections 163-A and 166 of the Act based on fault liability. It is the duty of the petitioner to establish the *factum* of accident as alleged in the petition. Let me consider the facts of the case on hand in the light of the above legal principles. As per the averments made in the petition, the accident occurred on 04.11.2004 in Vinukonda Town. I have carefully scanned the averments made in the petition and the chief-examination of PW.1. PW.1 in cleverly manner did not disclose whether he was a pillion rider or the rider of the motorcycle at the time of accident. For the first time in the cross-examination he introduced the version as if he was a pillion rider. Even assuming, but not conceding, that the petitioner was a pillion rider,

somebody might have driven the motorcycle. The petition as well as the chief-examination affidavit are silent with regard to the person who drove the motorcycle. For the reasons best known, the petitioner suppressed the fact that as on the date of accident who drove the motorcycle. In order to cover up the laches, the possibility of taking the plea at the time of accident he was a pillion rider cannot be ruled out completely. Even assuming, but not conceding, that he was a pillion rider, he has to prove who was the rider of the motorcycle. Who drove the motorcycle is within the exclusive knowledge of the petitioner. If a party to the proceedings intentionally and wilfully suppress the material fact, the Court or the Tribunal can draw an adverse inference against him. The accident occurred on 04.11.2004. The complaint was given on 08.11.2004. It is not the case of the petitioner that no Police Station is situated in Vinukonda Town. A perusal of Ex.A.1 reveals that there is a Police Station in Vinukonda. Mere delay in lodging the complaint by itself is not a sufficient ground to disbelieve the version of the petitioner if he assigned reasons much less cogent and valid reasons for delay in lodging the complaint. Even on 08.11.2004 the petitioner has not lodged the complaint, but his son lodged the complaint. As per the recitals of Ex.A.1 – F.I.R., the petitioner and his son were proceeding on the motorcycle. It is not mentioned in Ex.A.1 – F.I.R. also who drove the motorcycle either the petitioner or his son. In Ex.A.2 - charge sheet also, it is not mentioned who drove the motorcycle either the petitioner or his son. A perusal of the record clearly reveals that the petitioner intentionally and wilfully suppressed the fact with regard to the rider of the motorcycle. As per Ex.A.5 the petitioner was admitted in the hospital on 07.11.2004. When the accident occurred on 04.11.2004, why the petitioner was admitted in the hospital on 07.11.2004 is also not properly explained. A perusal of the entire record creates confusion with regard to the manner of the accident. The fact remains that the petitioner intentionally and wilfully did not disclose the person who drove the motorcycle on the date of accident.

14. A person, who approaches the Tribunal, must disclose all the material facts so as to enable it to arrive at a just and reasonable conclusion. If a person who suppressed the material fact is not entitled to claim any relief either from the Tribunal or the Court. Even if M.A.C.M.A.M.P.No.3595 of 2014 is allowed by converting the Section of law from 166 to 163-A of the Act, it will no way improve the case of the petitioner. The petitioner waited for a period of 10 years and filed the petition as if he is entitled to claim compensation under Section 163-A of the Act. The very purpose of the Motor Vehicles Act is to provide financial assistance to the victims of the road

accident and the legal representatives of the deceased persons. That does not mean that the litigant public are entitled to take undue advantage of the unfortunate accidents. While deciding the petitions under the Motor Vehicles Act, the Tribunal or the Court has to keep in mind that whatever compensation awarded by it is a public money. Taking into consideration the scope of the Act and also the material available on record, I am of the considered view that the petitioner failed to establish that he sustained injuries out of the use of the motorcycle on 04.11.2004 as pleaded by him. The Tribunal has considered all these aspects in right perspective and arrived at a conclusion that the petitioner failed to prove the *factum* of accident. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Hence, there are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal and the appeal lacks merits and bonafides.

15. In the result, M.A.C.M.A.M.P. and the Appeal are dismissed. There shall be no order as to costs.

16. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 20.04.2015

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