

HON'BLE SRI JUSTICE S.V. BHATT

M.A.C.M.A. No.1816 OF 2005

JUDGMENT:

Heard Sri G.Srikanath, learned counsel for the appellant and Sri Naresh Byrapaneni, learned standing counsel for 2nd respondent.

The unsuccessful claimant in O.P. No.436 of 2003 in the Court of Motor Accidents Claims Tribunal- cum- Principal District Judge, Warangal, is the appellant.

The appellant filed O.P. No.436 of 2003 claiming Rs.1,50,000/- towards compensation for the injuries received by the appellant in motor accident on 03.04.2003. The case of appellant is that he was travelling in auto bearing No. AP 36 V3878 to go to Narsampet and the said auto when reached Sai Kumar Petrol Pump on main road of Khanapur to Narsampet, due to rash and negligent driving of the auto driver/1st respondent, hit a wall and the appellant fell down, sustained injuries and was shifted to Government Hospital, Narsampet and thereafter to MGM Hospital, Warangal. The appellant suffered injuries in and around abdomen and he was treated as inpatient at MGM Hospital from 03.04.2003 till 08.04.2003. The injuries identified at the admission are as follows:

- “1. Small abrasion over outer cantharis of (lt) eye 1 x 1/4cm.
2. Diffuse abdominal tenderness. Not rigid.
3. Small Abrasion over (lt) Knee 1x1cm”

The appellant was discharged from hospital on 18.04.2003. The appellant claims to be an agriculturist and the compensation claimed is for the injuries suffered in the accident, pain and suffering, transportation and towards medical expenses.

The 2nd respondent contested the claim that the auto involved was not driven in rash and negligent manner and the injuries cannot be attributed to the accident dated 03.04.2003 of vehicle bearing No. AP 36 V3878. Collusion between the

appellant and the 1st respondent is attributed to claim compensation. The claim of compensation is excessive and untenable. The 2nd respondent prayed for dismissal of the petition.

The Tribunal framed the following points for consideration:

- i. Whether the accident is due to rash and negligent driving of the driver of the vehicle?
- ii. Whether the petitioner sustained any injuries and disability and is entitled to claim compensation, if so, to what amount and from whom?
- iii. To what relief?

The appellant was examined as PW.1 and Exs.A.1 to A.5 were marked. The Tribunal recorded that the happening of accident on 03.04.2003 is not established by the appellant therefore, no compensation need be paid. The findings recorded by the Tribunal are excerpted for immediate reference:

“A close perusal of the Discharge Summary shows that the petitioner is said to have received injuries in a road traffic accident at 8.00 .a.m. on 4.4.2003 near Narsampet. But it shows as if the petitioner was admitted on 3.4.2003 in the hospital. The case sheet is also summoned and a close perusal of the case sheet at page No.3 shows that the petitioner is said to have sustained injuries in a motor accident at 8 a.m. on 4.4.2003 and there was loss of consciousness for five minutes. The O.P. slip attached to the case sheet also shows that the petitioner is said to have received injuries on 4.4.2003 near Narsampet. Evidently, the writings in the first page about the name and particulars are in different hand. All these things suggests as to whether really the petitioner has received injuries in motor accident as alleged by him or not. That is the reason why the complaint was not given immediately and by colluding with the 1st respondent conveniently it was given after four days and in fact the accused was only charged for the offence under Section 337 IPC as per the charge sheet. The evidence of PW.1 does not disclose the cause of delay.”

Hence, the appeal.

Learned counsel for appellant contends that the consideration of Exs.A.4 and A.5 by the Tribunal suffers from patent illegality and further by reference to a few

advertent or inadvertent errors in these exhibits, the case of appellant that accident occurred on 03.04.2003 at 8.00 a.m. is disbelieved. The learned counsel draws the attention of this Court to Exs.A.4 and A.5 to point out that in these two exhibits except at one place on page 2 of Ex.A.4, at all the places, the date of admission of appellant at MGM Hospital at Warangal is stated as 03.04.2003 and that the details given at the time of admission *prima facie* show that the patient admitted with injuries alleged to have been sustained in road transport accident of auto. He further contends that not paying any compensation to the appellant is unsustainable and prays for allowing the appeal.

Learned standing counsel for respondent No.2, on the contrary, submits that the sequence of events required to be established by the claimant is that motor vehicle accident occasioned and in the said accident, the claimant sustained injuries and that one of the vehicles is covered by the insurance issued by the 2nd respondent company. According to him, for Ex.A.1 is dated 08.04.2003, it probabalizes that the filing of FIR and presentation of Exs.A.4 and A.5 are nothing but *ex post facto* attempts to get compensation from the 2nd respondent. Adverting to the wrong description of 03.04.2003 as 04.03.2003, learned counsel fairly states that except at one place, the date of admission is shown as 03.04.2003 at the rest of the relevant places in Exs.A.4 and A.5, and the patient was admitted with injuries from road transport accident.

Now the point for consideration is whether the appellant suffered injuries in the alleged accident dated 03.04.2003 and if so what is the compensation to which the appellant is entitled to?

The case of appellant briefly reiterated is that he was travelling by auto bearing No.AP36 V 3878 and due to rash and negligent driving of auto driver, the auto hit a wall and the appellant sustained injuries, he was at the first instance given first aid at Government Hospital, Narsampet and was admitted at MGM Hospital, Warangal. The reasons stated by the appellant for registering the FIR on 08.04.2003 is explained by contending that at the time of admission into hospital, due to medical exigency, preference was given to treatment and the pain, but not registering FIR against the erring vehicle. The complaint was registered on 08.04.2003. The fact that the FIR was registered on 08.04.2003 does not improbabilize the accident, I

have difficulty in accepting the reasoning of the Tribunal that registration of FIR is an *ex post facto* thought of the appellant. Further under Ex.A.2, the P.S. Narsampet investigated the FIR dated 08.04.2003 and charge sheet against respondent No.1 on 22.04.2003 under Section 337 of IPC was also filed. *Prima facie*, by reference to Exs.A.1 and A.2 read with the noting of the Doctors at the earliest point of time, I have no hesitation to hold that the accident had happened on 03.04.2003 and the appellant suffered injuries in the accident. Now the point is answered accordingly.

The appellant claimed Rs.1,50,000/- towards compensation. Except the oral evidence, hardly any other material is placed on record by the appellant either about his avocation, loss of income, amounts spent towards transportation or for purchase of medicines etc. In the peculiar facts and circumstances of this case and having regard to the view taken by the Apex Court in **Ramchandruppa v. The Manager, Royal Sundaram Alliance Insurance Company Limited**, I am constrained to treat that the appellant was earning a sum of Rs.3,000/- per month and from the material available on record, the appellant had undergone pain and suffering for a considerable period, the net loss for the period of suffering could be at Rs.18000 (Rs.3000/-X6). Further, the appellant was in hospital for more than 15 days, in my considered view, the just and proper compensation for injuries sustained by the appellant could be Rs.20,000/- and towards medical expenses, transportation and extra nourishment, I consider it appropriate to award compensation at Rs.7,500/-. The just compensation determined is Rs.45,500/- (Rupees forty five thousand five hundred only) with interest at 7.5% per annum from the date of application till the date of deposit.

The MACMA is allowed-in- part. No order as to costs.

Miscellaneous petitions, if any, pending in the MACMA shall stand closed.

S.V.BHATT, J

Date: 06.11.2015

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