

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.223 of 2009

JUDGMENT:

This appeal is filed under Section 173 of Motor Vehicles Act by the claimant challenging the judgment and award dated 19.8.2008 passed in M.V.O.P.No.1251 of 2005 on the file of the Judge, Family Court, Guntur-FAC-Chairman, Motor Accidents Claims Tribunal-cum-VIII Additional District Judge (Fast Track Court), Guntur.

2. For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows: On 01.8.2004, the petitioner was proceeding from Ponnur to Cherukupalli on his Hero Honda motor cycle. At about 07.30 P.m., when he reached near Milk Society, Sangupalem Kodur, the driver of auto bearing No.AP 7X 1394 had driven the same in a rash and negligent manner and hit the motor cycle from its opposite direction. The accident occurred due to rash and negligent driving of driver of the auto against whom the Station House Officer, Chandole Police Station registered a case in Crime No.28 of 2004 under Section 338 IPC. Due to the accident, the petitioner fell down from the motor cycle and sustained fractures. Immediately after the accident, the petitioner was shifted to Peoples Trauma Emergency Hospital, Guntur, where he took treatment as inpatient. The petitioner spent huge amount towards medicines and treatment. By the time of the accident, the petitioner was aged about 35 years and used to earn Rs.5,000/- per month by running rice mill. Due to the fractures, he could not attend work for a long time and thereby lost income. The auto, which belongs to the first respondent, was insured with the second respondent with effect from 18.9.2003 to 17.9.2004. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.4,00,000/- to the petitioner with interest and costs.

4. The first respondent remained *ex parte*.

5. The second respondent filed counter denying all the material averments made in the petition, *inter alia*, contending that the accident occurred due to rash and negligent act of the petitioner only and there was no negligence on the part of the driver of the auto. This respondent is not liable to pay compensation unless the petitioner establishes that the driver of the auto was having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. Hence the petition may be dismissed so far as this respondent is concerned.

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

- i. Whether the accident occurred due to rash and negligent driving of the driver of Auto bearing No.AP 7X 1394?
- ii. To what compensation the petitioner is entitled and from whom?
- iii. To what relief?

7. During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A9 and X1 were marked. On behalf of the second respondent, no oral evidence was let in, but Exs.B1 and B2 were marked.

8. On appraising the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the petitioner is entitled to a compensation of Rs.1,21,000/- but dismissed the petition on the ground that the petitioner failed to prove the factum of the accident. Feeling aggrieved by the judgment and award of the Tribunal, the claimant preferred the present appeal.

9. Heard Sri B.Parameswara Rao, learned counsel for the

claimant. Respondent Nos.1 and 2 having received notices in this appeal did not choose to appear. Hence, this court is inclined to dispose of the appeal on merits.

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

i . The findings of the Tribunal are based on assumptions and presumptions;

ii. The Tribunal, without considering the testimony of P.W.1 and Exs.A1 and A2, arrived at a conclusion that the petitioner failed to prove the factum of accident; and

iii. The amount of compensation awarded by the Tribunal is on lower side.

11. Now, the points that arose for determination in this appeal are:

(1) Whether the accident occurred due to rash and negligent driving of driver of the auto bearing No.AP 7X 1394?

(2) Whether amount of compensation awarded by the Tribunal is just and reasonable or not?

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Point No.1:

12. The Tribunal dismissed the petition on the grounds: (1) there was delay in lodging the complaint to the Police; and (2) the investigation was not conducted in proper manner. Mere delay in lodging the complaint by itself is not a valid ground to discard the prosecution version in toto even in criminal cases. While deciding the matters arose out of the Motor Vehicles Act, the Tribunal has to take into consideration the ground realities. It is a common knowledge that immediately after the accident, the injured person will be shifted to hospital for treatment. The Tribunal shall not expect that the injured or the eye witness to the accident, first has to go to Police Station and lodge the complaint and thereafter shift the injured to hospital. Even as per the recitals of Exs.A3 and A7, wound certificate and discharge

summary, the petitioner was admitted in Peoples Trauma Emergency Hospital on 01.8.2004 itself. Therefore, merely delay in lodging the complaint itself is not sufficient to dismiss the petition under Section 166 of the Motor Vehicles Act.

13. In a petition filed under the Motor Vehicles Act, the petitioner has to prove *prima facie* negligence on the part of the driver of the crime vehicle and also the factum of sustaining injuries. In criminal case, the prosecution has to prove the guilt of accused beyond all reasonable doubt. It is not out of place to extract hereunder the relevant portion in para – 13 of the judgment passed by the Tribunal:

“In my opinion, it cannot be ruled out that some accident has occurred due to irresponsible driving of the petitioner. This inference is strengthened by the fact that at the time of admission in Peoples Trauma Hospital, the Doctor observed that the petitioner has taken alcohol at the time of accident and that the petitioner is alcoholic”.

I have carefully scanned Ex.A3 wound certificate and Ex.A7 discharge summary. It is not mentioned in these two certificates that the petitioner had consumed alcohol at the time of the accident. This court is unable to understand how the Tribunal has arrived to such a conclusion in the absence of documentary evidence. In the cross-examination of P.W.2 (Doctor), it is not elicited that by the time of the accident, the petitioner had taken alcohol. Therefore, the finding of the Tribunal that the petitioner had taken alcohol at the time of the accident is not sustainable. In a criminal case, examination of eye witness is mandatory. In the instant case, the petitioner himself is injured witness and he is competent to speak about the manner of accident.

14. The petitioner examined himself as P.W.1 and got marked Exs.A1 F.I.R., and A2 charge sheet. As per the testimony of P.W.1, on 01.8.2004 at about 07.30 P.M., he was proceeding from Ponnur to Cherukupalli on Hero Honda motor cycle. His testimony further reveals that the driver of the auto had driven the same in a rash and

negligent manner and hit his motor cycle. In the cross-examination of P.W.1, nothing is elicited to shake his testimony so far as the manner of the accident is concerned. As per the recitals of Exs.A1 and A2, the accident occurred due to the rash and negligent driving of the driver of the auto. The oral testimony of P.W.1 is supported by the recitals of Exs.A1 and A2 so far as the manner of the accident and the factum of sustaining injuries by the petitioner are concerned.

15. I have carefully scanned the counter affidavit filed by the second respondent. It is not the case of the second respondent that the auto was not involved in the accident that occurred on 01.8.2004. It is not the case of the second respondent that the petitioner, in collusion with the Police, foisted a case against driver of the auto. If really, the Police foisted false case against driver of the auto, the second respondent might have examined one of its officers to substantiate the same. The findings of the Tribunal are based on assumptions and presumptions. The findings recorded by the Tribunal that the petitioner failed to prove the factum of accident is not sustainable. Therefore, the finding of the Tribunal on issue No.1 is hereby set aside.

16. Having regard to the facts and circumstances of the case, this court is of the considered view that the accident occurred due to rash and negligent driving of driver of the auto bearing No.AP 7X 1394, which resulted in injuries to the petitioner. Accordingly, point No.1 is answered in favour of the petitioner.

Point No.2:

17. In total, the Tribunal awarded an amount of Rs.1,21,000/- under different heads. The Tribunal awarded compensation basing on Exs.A6 to A9. The Tribunal rightly considered various documents filed by the petitioner and awarded just and reasonable compensation. Viewed from any angle, I am unable to accede to the contention of learned counsel for the petitioner that the Tribunal has not awarded

just and reasonable compensation. The material available on record establishes that the first respondent had not violated the terms and conditions of the policy; therefore, the second respondent has to indemnify the liability of the first respondent.

18. The Tribunal has not awarded interest. The petitioner is entitled for interest at 7.5% per annum from the date of petition till the date of deposit. Accordingly, point No.2 is answered.

19. In the result, the appeal is allowed in part setting aside the judgment and award dated 19.8.2008 passed in M.V.O.P.No.1251 of 2005 on the file of the Judge, Family Court, Guntur-FAC-Chairman, Motor Accidents Claims Tribunal-cum-VIII Additional District Judge(Fast Track Court), Guntur. The petitioner is entitled to compensation of Rs.1,21,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till the date of deposit. The respondent Nos.1 and 2 are jointly and severally liable to deposit the same within a period of two months from the date of receipt of a copy of this judgment. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 28th April, 2015.
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