

HONOURABLE SMT JUSTICE ANIS

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M.A.C.M.A.No.1126 of 2005

JUDGMENT:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree, dated 19.01.2005, in O.P.No.56 of 1999, passed by the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Nizamabad.

2. The 1st appellant/1st petitioner filed the aforesaid O.P. under Section 166 of the Act claiming compensation of Rs.2,00,000/- on account of injuries sustained by him in a motor vehicle accident that occurred on 05.04.2001. During pendency of O.P., the 1st petitioner died and his legal representatives were brought on record as petitioners 2 to 6 as per order, dated 05.02.2004 in I.A.No.40 of 2004.

3. For the sake of convenience, the parties hereinafter will be referred to, as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that the 1st petitioner is working as Head Constable in police department on a monthly salary of Rs.7,000/-. On 21.08.1998 at about 10:15 pm., the 1st petitioner and one Syed Ahamad Quadri were going towards Rokda Hanuman temple from Kanteshwar on Nizamabad-Armour road and when they reached near Kalyana mandapam at Chandrasekhar colony, a scooter bearing No.AP-25-D-9116 came at high speed in a rash and negligent manner and dashed the 1st petitioner and another on opposite direction, as a result of which, the front wheel of the said scooter went over the 1st petitioner. The 1st petitioner sustained fracture to his left leg, skull and sustained injuries to right leg, head and other parts of the body. He was admitted in Government Hospital, Nizamabad, where he was treated by team of doctors. His left leg was operated and a steel rod was inserted. Thereafter, he was referred to Osmania General Hospital, for treatment. He incurred an amount of Rs.80,000/- towards treatment. Due to injuries, he is unable to move from bed and not able to work and his future earnings are severely affected. The accident occurred only due to rash and negligent driving of driver of scooter bearing No.AP-25-D-9116, which was owned by the first

respondent and insured with the second respondent and thus, both the respondents are jointly and severally liable to pay compensation to the petitioner.

5. The first respondent remained *ex parte*.

6. The brief averments made in the counter filed by the second respondent are as follows:

The second respondent put the 1st petitioner to prove the manner of accident, his age and income, treatment taken by him in various hospitals and the amount spent towards treatment and specifically stated that the 1st petitioner is working as Head Constable in police department. After the accident, a complaint was lodged before Rural police station, Nizamabad, which was registered as a case in Crime No.131 of 1998 on 21.09.1998, wherein vehicle number was mentioned as AP-25-5171. The rider of the scooter after dashing the petitioner fell down on the road and sustained injuries and the scooter is lying at the place of accident. Thus, the accident took place with vehicle bearing No.AP-25-5171, but not AP-25-D-9116. But, the petitioner with an ulterior motive got changed the vehicle number from AP-25-5171 to AP-25-D-9116 to meet his selfish needs. The overwritings in the Xerox copy of the complaint are crystal clear that the 1st petitioner played mischief and he is liable for prosecution. Respondent specifically stated that the vehicle No. AP-25-D-9116 was not involved in the accident and therefore, the 1st petitioner is not entitled to any compensation.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the 1st petitioner examined P.Ws.1 and 2 and got marked Exs.A.1 to A.6 and Exs.X.1 and X.2. On behalf of the respondents, no oral or documentary evidence was adduced.

8. After considering the oral and documentary evidence, the Tribunal held that the accident was not occurred due to rash and negligent driving of driver of vehicle bearing No.AP-25-D-9116 and therefore, the 1st petitioner is not entitled to any compensation and accordingly, dismissed the petition.

9. Being aggrieved by the award passed by the Tribunal, the appellants/petitioners preferred the present appeal.

10. Learned counsel appearing for the appellants/petitioners argued that the

Tribunal has not considered Ex.A.1-copy of charge sheet, which clearly indicates that the accident occurred due to rash and negligent driving of driver of vehicle bearing No.AP-25-D-9116, but not AP-25-5171. He further stated that the Tribunal erred in stating the name of one Syed Ahmed Qurdi, who is an eyewitness to the accident. He further stated that the Court below failed to consider the injuries sustained by the 1st petitioner in the accident. He also placed reliance on a decision reported in **Bodige Padma and othes Vs. Makula Shanker and others**, wherein it was held at para 15 as follows:

“In the case on hand, the accident occurred on 01.02.1997 and the report was lodged on the next day i.e. on 02.02.1997 the FIR is therefore, promptly lodged. The number of the offending vehicle, however, was not mentioned in the FIR since B.Sanjeeva Rao, who lodged the FIR was in a precarious condition and was not in a position to note down the number of the offending lorry. After registering the FIR, the police conducted investigation and in the course of investigation, from the version of P.Ws.2, 3 and others it appears, they could be able to trace out the lorry involved in the accident. Absolutely there was no basis for the Tribunal to record a finding that on account of delay in filing the charge sheet, a version of P.Ws.2 and 3 has to be doubted. The FIR need not contain all the details relating to the occurrence of the accident. The names of the eyewitnesses also need not be mentioned in the first information report. Further, a summary procedure was contemplated to evaluate the evidence of the witnesses in claim cases under Motor Vehicles Act. The factum of accident need not be proved in claim cases by the standard of beyond reasonable doubt. The Tribunal has to take a broad and comprehensive view of the matter and the claimants are not required to prove each and every fact relating to the occurrence of the accident meticulously.”

11. On the other hand, learned counsel for the second respondent argued that after the accident, a complaint was lodged and the same was registered as a case in Crime No.131 of 1998 by Rural Police Station, Nizamabad and after investigation the vehicle number was changed from AP-25-5171 to AP-25-D-9116 without any reason. He further stated that intentionally the 1st petitioner has not filed the FIR copy. He further argued that the vehicle bearing No.AP-25-5171 is involved in the accident and Xerox copy of the FIR clearly shows that there are overwritings. The 1st petitioner, being a Head Constable, is able to change the vehicle number from AP-25-5171 to AP-25-D-9116 and prayed to dismiss the petition.

12. Having regard to the submissions made by learned counsel appearing for both parties, the points which are to be decided in this appeal are as follows:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellants/petitioners are entitled for enhancement of compensation as prayed for?
3. Whether the appellants/petitioners are entitled for compensation against the second respondent as prayed for?

13. POINTS:

During pendency of the case before Tribunal, the 1st petitioner died and his legal representatives were brought on record as petitioners 2 to 6 as per order, dated 05.02.2004, in I.A.No.40 of 2004. P.W.1 is wife of the 1st petitioner and she is not an eyewitness to the accident. The 1st petitioner examined P.W.2 to prove that he is an eyewitness to the accident. In the cross-examination, P.W.2 categorically admitted that his name is not figured as an eyewitness in the charge sheet- Ex.A.1. Further, the 1st petitioner has not filed copy of complaint, which was registered as a case in Crime No.131 of 1998. If really the 1st petitioner filed the copy of FIR, the true facts would have come to the light. The respondents filed certified copy of said FIR in O.P.No.55 of 1999, in which it is clearly mentioned that the petitioner and one Syed Ahmed Quadri were working in police department and crime vehicle was AP-25-5171, but not AP-25-D-9116. Except the evidence of P.Ws.1 and 2, no other evidence was produced to prove that after the investigation, it was noticed by the Investigating Officer that the vehicle bearing No.AP-25-D-9116 was involved in the accident, but not the vehicle bearing No.AP-25-5171. The case law relied upon by learned counsel for the petitioners is not applicable to the facts of present case. In the said case, the FIR is silent with regard to number of the vehicle. After registering the FIR, police conducted investigation. During course of investigation, they could not be able to trace out the lorry involved in the accident and thus, the appeal was allowed. But, in the present case, the 1st petitioner, as a Head constable, gave complaint before the Rural Police Station, Nizamabad against the vehicle bearing No.AP-25-5171. But, the charge sheet was filed against the vehicle bearing No.AP-25-D-9116 and the 1st petitioner failed to examine the Investigating Officer, who investigated and found that the vehicle bearing AP-25-D-9116 is the vehicle involved in the accident, due to which the petitioner sustained injuries. The 1st petitioner failed to prove the accident occurred due to rash and negligent driving of driver of vehicle

bearing No.AP-25-D-9116. Therefore, the Tribunal after considering the facts on record, rightly held that the 1st petitioner is not entitled to any compensation as he failed to prove the accident occurred due to rash and negligent driving of driver of vehicle bearing No.AP-25-D-9116. Therefore, the petitioners have not made out any ground to interfere with the order passed by the Tribunal.

14. Accordingly, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

ANIS, J

OCTOBER 09, 2015

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HONOURABLE SMT JUSTICE ANIS

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Date: 09.10.2015

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