

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.1337 of 2005

J U D G M E N T:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 16.02.2005, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, (Fast Track Court), Nizamabad (for short 'the Tribunal'), in O.P.No.969 of 1998.

2. The appellant/petitioner filed the above O.P under Section 166 of the Act read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989, (for short 'the Rules'), claiming compensation of Rs.2,50,000/- on account of the injuries sustained by him in a motor vehicle accident that occurred on 08.09.1998.

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 on 08.09.1998, the petitioner was driving the motorcycle bearing No.AIB.9704 from Banswada to Nizamabad and at about 3:00 p.m, when he reached in front of Syndicate Bank, a Jeep bearing No.AP.25.6090 driven by the second respondent came at high speed in a rash and negligent manner on wrong side of the road in opposite direction and dashed against his motorcycle. As a result of the accident, the petitioner and another person, who was the pillion rider on the motorcycle, fell down and the front wheel of the jeep went over them. Due to the sudden impact, the petitioner sustained fractures to his shoulder, left leg and other injuries all over the body. Immediately after the accident, he was admitted in Sri Sai Thirumala Nursing Home, Nizamabad, where he was treated by Dr. Bhoopath Reddy, Orthopaedic Surgeon. His right hand was operated twice. He require further treatment and so far, he spent an amount of more than Rs.1,00,000/- for his treatment. Due to the fractures sustained, he was

unable to move from the bed, walk and work and his future earnings and amenities were affected and he suffered permanent disability. The first respondent is the owner and second respondent is the driver of the Jeep bearing No.AP.25.6090. Since the accident was caused due to rash and negligent driving of the Jeep bearing No.AP.25.6090, the petitioner claimed compensation of Rs.2,50,000/- against the respondents.

5. The brief averments made in the common written statement filed by both the respondents are as follows:

The respondents put the petitioner to prove the manner of accident, his age and income and specifically stated that on the date of accident, the petitioner was driving the motorcycle at high speed in a rash and negligent manner. Seeing the rash driving of the petitioner, the second respondent stopped his jeep near G.P. Office, Banswada, and while coming in the opposite direction to the second respondent, the petitioner lost control over the motorcycle and dashed to Sri Syed Ahmed, a cyclist, and fell down along with the pillion rider in front of the jeep, which was parked. At the time of the accident the jeep was not in motion. The accident occurred as the petitioner lost control over the motorcycle and gave a dash to the cyclist, but not due to the rash and negligent driving of the jeep driven by the second respondent. The claim of the petitioner that he sustained fracture to his left leg, shoulder and other injuries all over the body are all incorrect and injuries mentioned by him are exaggerated and created in collusion with the doctor, who treated him. The petitioner also has not filed medical bills in support of his claim. The petition is filed by the petitioner mischievously for wrongful gain and the police after thorough investigation conducted the scene of offence panachanama and closed the First Information Report as the complaint given was false one with wrong information and finally stated that the claim of compensation is excessive and petitioner is not entitled for any claim and prayed the Court to dismiss the petition.

6. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner got examined PWs.1 to 3 and got marked Exs.A.1 to A.9 on his behalf. On behalf of the respondents, RWs.1 & 2 were examined and Exs.B1 to B4 got marked.

7. After considering the oral and documentary evidence, the Tribunal having held that the accident occurred due to rash and negligent driving of the petitioner and Jeep bearing No.AP.25.6090 was in no way responsible for the accident, dismissed the petition filed by the petitioner.

8. Aggrieved by the award passed by the Tribunal, the petitioner preferred the present appeal.

9. The learned counsel appearing for the appellant/petitioner argued that the accident was caused due to rash and negligent driving of the driver of the jeep but not the petitioner; that after receiving the complaint, police has not registered the case; that only 7½ months after the accident, the First Information Report was lodged; that due to the rash and negligent driving of the driver of the jeep, the petitioner sustained grievous injuries and he was treated by Orthopaedic Surgeon-PW.2; that the Tribunal without considering all these aspects dismissed the petition though petitioner sustained 50% disability and finally prayed the Court to grant compensation.

10. On the other hand, the learned counsel appearing for the respondents contended that the Tribunal after considering the evidence on record rightly held that the accident occurred due to rash and negligent driving of the petitioner and dismissed the petition and the findings of the Tribunal needs no interference.

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

1. Whether the appellant/petitioner is entitled for compensation as prayed for?
2. Whether the order passed by the Tribunal is just and reasonable?

12. **POINTS:** A perusal of the evidence available on record shows that PW.1 stated that on the date of accident, he was driving the motorcycle bearing No.AIB.9704 from Banswada to Nizamabad and when the motorcycle reached the Syndicate Bank, one Jeep bearing No.AP.25.6090 driven by the second respondent came at high speed in a rash and negligent manner and dashed the motorcycle, due to which he fell down. On the other hand, the Investigating Officer after conducting the investigation clearly held that the petitioner, who drove the motorcycle, was rash and negligent in riding the motorcycle and gave a dash to the cyclist and fell down in front of the Jeep belonging to first respondent. Therefore, the petitioner was negligent while driving the motorcycle, but not the driver of the jeep. As such, the Tribunal rightly held that the petitioner was at wrong and not granted any compensation.

13. The contention of the learned counsel appearing for the appellant/petitioner is that the police registered the First information Report with a delay of 7½ months, therefore, the contents of the First Information Report cannot be taken into consideration. PW.3 is the eye witness to the Accident. As per the charge sheet, PW.3 clearly stated that the petitioner only was rash and negligent in riding the motorcycle and he himself dashed to a cycle, due to which he sustained injuries. The petitioner in this case has not examined the Investigating Officer, who registered the First Information Report-Ex.B1 and there is no evidence on record to show that 7½ months delay was caused in registering the First Information Report. Considering the evidence of RWs.1 & 2 coupled with documentary evidence, the Tribunal rightly held that the petitioner was rash and negligent while driving the motorcycle and caused the accident and rightly dismissed the petition and therefore,

the finding of the Tribunal needs no interference.

14. In view of the above discussion, the appeal is dismissed. No order as to costs.

15. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 30.06.2015

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