

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.1488 of 2004

-

JUDGMENT:

The unsuccessful claimant in M.V.O.P.No.1357 of 2002 on the file of Chairman, Principal Motor Accidents Claims Tribunal (District Judge), Warangal in the claim maintained under Section 166 of the Motor Vehicles Act for the injuries sustained by him in the motor accident dated 3/4.3.2002 at the intervening night near Kommala village while proceeding from Hanamakonda to Kothagudem, when the Car bearing No.AP 20 T 4563 as inmate along with his wife, daughter and another in claiming that in opposite direction coming jeep bearing No.AP 7 U 6326 belongs to first respondent insured with the second respondent covered by Ex.B.1 policy dashed against the car. As a result of which, he sustained injuries also his wife and minor injuries by his daughter. The Tribunal after recording the evidence of the claimant as PW.1 and his wife as PW.2 and the doctor, who treated him and his wife as PW.3 and Exs.A.1 to A.18 came to the conclusion that the case sheet of Jaya Hospital, Hanamakonda where the injured-claimant was admitted covered by Ex.A.17 case sheet. PW.2 speaks that the alleged accident was result of the failure of the car brakes in which PW.1 and his family members were travelling at that place and at that time that belies the version of involvement of the jeep of first respondent insured with second respondent and that too for the alleged accident the injured-claimant being a Police Officer not even chosen to report to the police muchless by the car driver; leave about the other inmates including his wife if at all outcome of involvement of jeep of first respondent, with the version as if the jeep driver dashed and fled away with jeep without stopping introduced for the claim purpose and that the complainant being a Police Officer could manage to file charge sheet against the jeep by implicating and dismissed the claim. Impugning the same, the appeal is filed

with contentions in the grounds of appeal that the Tribunal gravely erred in improper appreciation of evidence on record by taking irrelevant considerations ignoring the substratum of the accident and the manner it took place and the evidence on record shows the involvement of the jeep by giving importance to the so-called statement before the doctor as if outcome of brake failure for no worth circumstances to support. Hence to allow the claim as prayed for, for Rs.1,00,000/- before the Tribunal by fixing joint liability for the accident.

2. The learned counsel for the appellant reiterated the same. Whereas, it is the contention of the learned counsel for the contesting second respondent-insurer that the award of the Tribunal holds good having fresh in mind of the facts by recorded the evidence in coming to a right conclusion from the unexplained admission in the statement to the doctor by the injured with attending circumstances showing implication of the jeep and managing the police to file charge sheet against the jeep driver and for this Court while sitting in appeal there is nothing to interfere. Hence to dismiss the appeal.

3. Perused the material on record. For convenience sake, the parties are referred to as they are arrayed before the Tribunal.

4. Now, the points that arise for consideration in this appeal are:

1. *Whether the dismissal of the claim by the Tribunal is unsustainable and requires interference by this Court while sitting in appeal and if so whether there are any grounds to fasten liability on the respondents-owner and insurer of the jeep and if so with what observations?*
2. *To what result?*

-

5. POINT-1:

The time and place of occurrence is not in dispute. So also the factum of the injured-claimant and his wife PW.2 and the daughter were travelling in the car as inmates at the time of accident. It is important for the Court to not only look into the

direct oral testimony but also the circumstances attending the same in appreciation as part of duty of Court as trial is a voyage is the truth is the quest. Undisputedly there are circumstances showing from Ex.P.4 scene observation report that only the right side front portion of the car was damaged and not the entire front portion or at least any middle portion or left side front portion. In this perspective if whether appreciating the circumstances attending the manner of accident as to the credibility of the testimony of PWs 1 and 2 with reference to the earlier statement to the doctor as it was outcome of brake failure of the car, for the Tribunal to conclude as if jeep is planted not even involved by managing to register the crime and filing charge sheet, had the car lost control from failure of brakes of the driver that too in the mid night it could have been dashed either a tree or anything hard object coming across for its stopping. When such was the event the damage shall not be on the right side portion alone even from that speed while proceeding dashed at least to a right side tree. That itself is a circumstance to show the so-called statement to the doctor cannot be constituted as admission muchless unequivocal and unexplained and relevant one to decide the claim. From these facts and circumstances, if one analysis further, no doubt there are circumstances against the claimant showing he did not choose to report to the police muchless by his wife or the car driver. It is his father-in-law who came and reported to the police more than a day after from the time of incident stating he came to know of the occurrence. From that, it can be said that there is a possibility of implication from the delay by an introduced version to implicate the jeep. However, possibility is different from appreciation as to what was happened. The facts of the case show the injured is a Police Officer on duty in Warangal at Hanamakonda. He unauthorisedly left the duty and proceeding along with his wife and family members at that time to reach his residence at Kothagudem and when the accident took place in those circumstances and he was unauthorisedly proceeding absconding from duty he could not dare to report to the police equally his wife at his instance that can also be extended to the driver of the car where he

was travelling. Thus once he could not report the occurrence in the attending circumstances the Court has to appreciate the same with other factual back ground as to what was transpired actually when that was his explanation that too while he was unauthorizedly travelling by absconding from duty and in a grief and unable to judge wisely of what to do, the non-giving of report by him or his wife or the car driver at his instance no way fatal to the claim. Even taken for argument sake his father-in-law was introduced after 1 ½ days of the occurrence to report to the police to implicate the jeep, there is a possibility for the first respondent-owner of the jeep at least for the insurer to cross examine if not come forward on summoning by seeking as a Court witness with right of cross examination to elicit what was transpired if jeep is not involved. The insurer in that line did not make any efforts. There is no any oath against oath from the insurer. Undisputedly, the policy covered the risk of the vehicle of the jeep of the first respondent. The first respondent not even chosen to contest. There is nothing even to attribute or to say collusion between the first respondent and the claimant. In the attending circumstances, and from the manner of the accident shows only right side front portion of the jeep sustained a dent with small damage that is probablising while the jeep coming in opposite direction dashed and without stopping fled away by driver of the jeep; as there is nothing to belie. It is in the factual matrix, the police from the facts filed charge sheet against the jeep driver. The trial Court should have been properly appreciated the same instead of coming to the conclusion without basis as if it was a manipulated report to register the crime and police were under the influence of the claimant to falsely implicate the jeep. Such a conclusion no way justifies muchless to dismiss the claim therefrom. When the factual matrix with reference to the circumstances establishes involvement of the jeep while coming in opposite direction in dashing the car. In the claim filed under Section 166 of the M.V.Act, it is for the claimant to establish negligence of the driver of the first respondent that totally resulted the accident and injuries with no fault of the car driver. For that, the car driver was not even examined, though a

material witness, for reasons better known to the claimant/injured. As the vehicles were almost equal in size that too proceeding in opposite direction and the scene observation report placed reliance by the claimant under Ex.A.4 itself speaks right side front portion of the car with a dent damaged from involvement of the jeep, it clearly establishes that there is a composite negligence on the part of the jeep driver also besides that of the car driver. Coming therefrom to decide the percentage of contributory or composite negligence as it all depends upon several factors and circumstances including place on the road where accident took place, size of the road, condition of the road, manner of accident and damage to the respective vehicles; from the material available on record discussed supra, it is just to arrive equal composite negligence on the driver of the car as well as the driver of the jeep of first respondent insured with second respondent.

6. It is left open to the claimants if there is any standard package policy of the car to cover the risk of the inmates to make a claim against the driver, owner and insurer of the car for 50% as per the Consumers Protection Act or if there is a comprehensive policy covering the risk to lay a separate claim under the M.V.Act. Coming to the negligent act of the jeep driver for which the respondents are liable for 50%; from Ex.B.1 policy covers the risk/liability concerned; as per Ex.A.2 wound certificate of the injured – claimant, he sustained one fracture and two simple injuries. As per the Ex.A.17- case sheet, he was treated as inpatient for about 14 days. Taking into consideration of the same, an amount of Rs.20,000/- for the fracture, Rs.5,000/- for the two simple injuries, Rs.15,000/- for the medical expenses and treatment, attendant charges and transport charges can be awarded as he is a public servant entitled to reimbursement if incurred afterwards more than that . Thus, the compensation comes to Rs.40,000/- of which the 50% liability of respondents come to Rs.20,000/- that can be awarded with interest at 7.5% from date of appeal till realization. Accordingly, point No.1 is answered.

-

7. POINT No.2:

Accordingly, the appeal is partly allowed against the respondents and by awarding compensation of Rs.20,000/- with interest at 7.5% per annum from the date of appeal petition till the date of realization. There shall be no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date: 6th February, 2015

PNV