

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.728 of 2012

JUDGMENT:

Aggrieved by the Award dated 28.01.2012 in MVOP No.136 of 2007 passed by the Chairman, M.A.C.T-cum-IV Additional District Judge (F.T.C.), Ranga Reddy District (for short "the Tribunal"), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

- a. The case of the claimant is that on 23.01.2006 at about 6.00AM when he was proceeding on the left side of the road and when he reached near Ashta Laxmi Temple, R.K.Puram, L.B.Nagar, one Maruthi car bearing No.AP 09 AR 2425 came from opposite direction being driven by its driver at high speed and in a rash and negligent manner, dashed him. In the resultant accident, the claimant sustained grievous injuries. It is averred that car driver was responsible for the accident. On these pleas, the claimant filed M.V.O.P.No.136 of 2007 under Sections 166 of Motor Vehicles Act, 1988 (for short "M.V Act") against respondent Nos.1 and 2, who are the owner and insurer of car and claimed Rs.5,00,000/- as compensation.
- b. Respondent No.1 filed counter and contended that policy was in force and the offending car was insured with the 2nd respondent/Insurance Company, therefore, Insurance Company is liable for the claim.
- c. Respondent No.2/Insurance Company filed Counter denying all material averments and urged to put the claimant in strict proof. It contended that the accident was occurred due to negligence of

the driver of car and he had no valid and effective driving licence at the time of accident and hence it is not liable to pay any compensation. It further contended that the car was not involved in the accident and the same was planted. Finally, it contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

- d. The Tribunal dismissed the OP on the observation that the Maruthi Car bearing No.AP 09 AR 2425 was not involved in the accident and that the present case is a hit and run accident and the claimant failed to mention the car number either in FIR or in Medico Legal Record and he also failed to prove that car of R.1 hit him and caused the accident.

Hence, the appeal by claimant.

3) Heard arguments of Sri P.Giri Krishna, learned counsel for appellant/ claimant; Sri T.Mahender Rao, learned counsel for respondent No.2/ Insurance Company and Sri V.Atchuta Ram, learned counsel for respondent No.1/owner.

4) The parties in this appeal are referred as they are arrayed before the lower Tribunal.

5) Challenging the award, dismissing the claim petition learned counsel for appellant/claimant strenuously argued that the Tribunal has not properly appreciated the evidence and arrived at a wrong conclusion that Maruthi Car bearing No.AP 09 AR 2425 was not involved in the accident and that the present case is a hit and run accident. Learned counsel pointed out that though the Insurance Company contended that the claimant in collusion with R.1 got planted the car bearing No.AP 09 AR 2425 of R.1 as if it were the crime vehicle, due to the friendship between R.1 and son-in-law of PW.1, the Insurance Company could not establish such nexus between R.1 and the son-in-law of PW.1. He submitted that in the FIR

the complainant, who is the son-in-law of PW.1 clearly mentioned that immediately after accident, one Laxmi Narayana who is the brother of R.1 got down from the car and sent away the car as his family members were going to marriage and phoned to complainant by cell phone and after his arrival, admitted PW.1 in the hospital and gave his cell phone number to the complainant with the promise that he would turn up but failed to keep up his promise and later the police could trace the car with the help of the cell phone number provided by the aforesaid Laxminarayana because the cell phone number of Laxmi Narayana was mentioned by the complainant in FIR. He submitted that these facts would clearly show that the car bearing No.AP 09 AR 2425 was very much involved in the accident and he further submitted that R.1 (RW.1) who is the owner of the vehicle did not dispute the factum of accident and involvement of his vehicle but the lower Tribunal committed error in not appreciating the evidence on these facts. He thus prayed to allow the appeal and fix the liability on respondents and award compensation.

6) Per contra, learned counsel for respondent/Insurance Company supported the award and argued that the lower Tribunal rightly dismissed the claim holding that it was a case of hit and run accident and the car of R.1 was collusively implanted to get compensation. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the points for determination are:

1. Whether the pleaded Maruthi car bearing No.AP 09 AR 2425 was involved in the accident and if so whether the accident was occurred due to the fault of its driver?
2. Whether the claimant is entitled to compensation and if so to what amount?
3. To what relief?

8) **POINT No.1:** As per claimant, the accident was occurred on 23.01.2006 at about 6:00am, near Ashta laxmi Temple, R.K.Puram, L.B.Nagar, Hyderabad. It is his further case that he was hit by Maruthi

car bearing No.AP 09 AR 2425 resulting in fracture of his both legs. The counters of respondents would show that R.1 did not dispute the factum of accident and involvement of his vehicle but his contention was that his driver was not responsible for the accident. Whereas R.2 in its counter did not dispute the factum of accident but vehemently contended that it was a hit and run accident and the car bearing No.AP 09 AR 2425 was not at all involved in the accident. The lower Tribunal agreed with R.2 and held that it was a hit and run accident and accordingly dismissed the claim. On a close scrutiny of the evidence on record, it appears that the lower Tribunal faltered in holding that the case on hand is a hit and run accident and the Maruthi car bearing No.AP 09 AR 2425 was not involved in the accident.

a) The contention of R.2 is that R.1 and the complainant, who is the son-in-law of PW.1 are friends and therefore, they have planted R.1's vehicle as crime vehicle to claim compensation. If this argument is to be true and if R.1 and complainant are close friends and wanted to plant R.1's car, the complainant would have clearly mentioned the vehicle number in the FIR itself but that is not the case here. His narration in FIR is that after accident, one Laxminarayana got down from the car and immediately sent away the car from the scene of offence to avoid his father-in-law from seeing the car number and later said Laxminarayana called the complainant over cell phone and they admitted him in Anurag Ortho Hospital, Chaithanyapuri and Laxminarayana requested complainant that they were in a hurry to go to marriage and he would meet the complainant again and went away by giving his cell phone No.9391354479 but later he did not turn up and hence the complainant lodged FIR. As per the evidence of RW.1(R.1), Laxminarayana is his brother. Here running the risk of repetition, it must be said that if really the complainant, R.1 and Laxminarayana were friends, there was no need for the complainant to state as if Laxminarayana called him by cell phone and after admitting the victim in the hospital, went away to the marriage by giving his cell phone number. The complainant could have

straightaway mentioned the car number in the FIR. He would not give scope to the reader of the FIR to doubt that it was a hit and run case. Therefore, it appears that the FIR version is a true one. As rightly contended by learned counsel for appellant, except contending that the complainant and R.1 are friends, no iota of evidence is placed in that regard. On the other hand, the facts would show that PW.1 belongs to Mancherial and R.1 belongs to Hyderabad and so there appears to be no possibility for any nexus between PW.1 and R.1. It is true that his son-in-law i.e, complainant is resident of Hyderabad but R.1 did not place any evidence to show that R.1 and complainant are friends. Therefore, it is difficult to believe that they colluded together and planted R.1's car. Above all, the police after thorough investigation have laid charge-sheet against driver of R.1 holding that the vehicle of R.1 was involved in the accident. R.1 too admitted the factum of involvement of his vehicle in the accident. In view of the overwhelming evidence showing the involvement of the car bearing No.AP 09 AR 2425 in the accident and for want of contra evidence on the part of R.2 except bare denial, it can be held that the car bearing No.AP 09 AR 2425 was very much involved in the accident and its driver was responsible for the accident. This point is accordingly answered in favour of appellant/claimant.

9) **POINT No.2:** This point is concerned, Ex.A.3—medico legal certificate issue by Life Hospital, Hyderabad would show that the claimant suffered inter-condylar fracture of left femur and bi-condylar fracture of right tibia. The evidence of PW.2—Orthopedic Surgeon of the said Hospital shows that he performed surgery on 25.01.2006 and fixed plates and screws to both the legs and discharged PW.1 on 16.02.2006. He further deposed that subsequently on 24.06.2011 he examined PW.1 and found that both the fractures were united but the flexion of the left knee was restricted by 40 degrees and thereby the movements of the left knee were effected. He stated that PW.1 cannot sit cross-legged in Indian style and he cannot sit on the ground. He assessed the disability as 20%. He was thoroughly cross-examined by both the respondents. R.1 made a faint attempt to

dislodge his evidence by suggesting that he was not a competent Doctor but the witness denied the said suggestion. It must be said that the competency of PW.2 and the veracity of his evidence could not be shattered. Hence basing on the evidence on record, compensation is fixed as follows:

a) For pain and suffering due to fracture of both legs, the claimant is awarded **Rs.25,000/-**.

b) Considering the grievous nature of fracture injuries and the treatment in a private hospital and taking Ex.A.7—medical prescriptions and bills, the claimant is awarded **Rs.1,50,000/-** towards medical expenditure.

c) The claimant is also awarded a sum of **Rs.5,000/-** towards extra nourishment charges and another sum of **Rs.5,000/-** towards attendant and transportation charges.

d) So far as disability is concerned, no doubt PW.2 stated that due to restriction of the movements of the left knee, the claimant suffered 20% disability. It is only the physical disability. The claimant in his evidence could not establish as to whether he suffered any monetary loss due to physical disability. Therefore, he will not be entitled to compensation for loss of earning capacity, rather he will be entitled to compensation for loss of basic amenities alone. Considering that due to disability in the old age, the claimant has to depend on others for his movements and thus lost basic amenities in the life, he is awarded **Rs.20,000/-**.

Thus the total compensation payable to the claimant under different heads is as follows:

Pain and suffering Rs. 25,000-00

Medical expenditure Rs.1,50,000-00

Extra nourishment charges Rs. 5,000-00

Attendant and Transportation charges Rs. 5,000-00

Loss of basic amenities Rs. 20,000-00

Total Rs.2,05,000-00

10) In the result, the M.A.C.M.A. filed by the appellant/claimant is allowed by setting aside the award passed by the Tribunal and ordered as follows:

- a. The appellant/claimant is awarded **Rs.2,05,000/-** with proportionate costs and interest @ 7.5% per annum from the date of O.P till the date of realization against respondents 1 and 2; and
- b. Respondents 1 and 2 are directed to deposit the compensation amount within two(2) months from the date of this judgment, failing which execution can be taken out against them.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 17.11.2015

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