

THE HON'BLE MRS JUSTICE ANIS

M.A.C.M.A.NO.1341 OF 2005

JUDGMENT:

This appeal is filed by the appellant/claimant under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the judgment and decree dated 16.03.2005, passed by the Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge at Nizamabad, in O.P.No.128 of 2000, where no compensation was awarded.

2. The petitioner/appellant filed the above Original Petition under Section 166 (1) (a) of the Act claiming compensation of Rs.2,00,000/- on account of the injuries sustained by him in a motor vehicle accident that occurred on 09.11.1999.

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

4. The brief averments made in the petition are that on 09.11.1999 at about 5 pm, the petitioner was standing on the side of the road along with another person, namely B.Narayana, in the meanwhile, one scooter bearing No.AP-25-B-5373 came at high speed in rash and negligent manner from Boregaon side and dashed him and also the said B.Narayana. The petitioner fell down and the front wheel of the scooter run over him due to which he received grievous injuries all over his body. Immediately, he was shifted to Maithry Hospital, Nizamabad, where

Dr. C.Hari Prasad treated him and his left leg was operated and rod was inserted. The petitioner had incurred an amount of Rs.80,000/- for the treatment. Due to the injuries, the petitioner is unable to move from bed and lost future earnings. He stated that he used to run cycle taxi automobile business and also doing agriculture and was earning Rs.6,000/- per month. Therefore, the petitioner prayed the Court to grant Rs.2,00,000/- as compensation against the respondents.

5. The first respondent remained *ex parte*. The brief averments made in the written statement filed by the second respondent are as follows:

The second respondent put the petitioner to prove the manner of accident, his age and income and specifically pleaded that the compensation claimed by the petitioner is high and excessive, and prayed the Court to dismiss the petition.

6. Basing on the above pleadings, the Tribunal framed three issues and to substantiate his claim, the petitioner got examined PWs.1 to 3 and got marked Exs.A.1 to A.31 on his behalf. On behalf of the contesting respondent, no oral or documentary evidence was adduced.

7. After considering the oral and documentary evidence, the Tribunal held that the case of the petitioner and evidence brought on record is not trustworthy but is a concocted story for the purpose of false claim petition for wrongful gain to himself and to cause wrongful loss to the insurance company and that the petitioner is not entitled for any compensation from anybody much less from both the respondents and dismissed the claim petition.

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

9. The learned counsel appearing for the appellant/petitioner argued that the petitioner received grievous and simple injuries in the accident and the Tribunal, without considering Exs.A.1 and A.2, dismissed the claim of the petitioner on the ground that there was no rash and negligent driving on the part of the rider of the scooter bearing No.AP-25-B-5373. It is also argued that as per Exs.A.1 and A.2 i.e., copies of FIR and charge sheet, it is clearly established that the police after investigation filed charge sheet against the rider of the scooter that he committed the offence punishable under Section 338 of the Indian Penal Code and the Tribunal, without considering the documentary evidence, erred in holding that the rider of the scooter was not rash and negligent. It is also argued that the claimant received one grievous injury and one simple injury but without considering the evidence of the Doctor, the Tribunal did not grant any compensation for injuries as well as pain and suffering and extra nourishment and other charges. It is also argued that as per the evidence of P.W3, Dr. C. Hari Prasad, the petitioner was admitted in the hospital on 09.11.1999 and operation was conducted on 10.11.1999 and he was discharged on 24.11.1999. Ex.A.3 is the injury certificate, which shows that the petitioner sustained one grievous injury and one simple injury and finally prayed the Court to grant compensation.

10. On the other hand, the learned counsel for the second respondent-insurance company argued that after considering the oral and documentary evidence, the

Tribunal rightly dismissed the claim petition and further, the evidence of P.W.3 cannot be taken into consideration in view of the judgment of this Court in AAO.No.3518 of 2004 and finally, the said finding of the Tribunal needs no interference and prayed the Court to dismiss the appeal.

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 Tribunal is right in dismissing the claim petition?
2. Whether the appellant/petitioner is entitled for any compensation as prayed for?

12. **P O I N T S:** A perusal of the evidence of P.W.1 shows that on 09.11.1999 at about 5 pm, he was standing on the road side along with another person, at that time, the rider-cum-owner of the scooter bearing No.AP-25-B-5373 came in a rash and negligent manner and dashed the petitioner, due to which he fell down and received injuries. To prove this fact, the petitioner filed Exs.A.1 and A.2, which show that three days after the accident a complaint was given to the police and the same was registered as Crime No.146 of 1999 and the investigating officer, after conducting investigation, filed charge sheet against the rider-cum-owner of the scooter bearing No.AP-25-B-5373. This fact was not disputed by the second respondent. The main grievance of the second respondent is that the petitioner failed to explain the delay in filing the complaint before the police.

13. Learned counsel for the petitioner-appellant argued that immediately after the accident, the petitioner was shifted to hospital, as such he was unable to give the complaint in time and relied upon the case law reported in **Ravi v. Badrinarayan**, wherein the Apex Court has held as follows:-

“It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant’s case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the police station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.”

Basing on the settled principle of law, the petitioner explained the delay in not giving complaint to the police immediately after the accident. In the present case, only three days delay occurred and the said delay was rightly explained as the petitioner was

admitted in the hospital for treatment.

14. The other contention of the learned counsel for the second respondent is that the evidence of P.W.2 cannot be taken into consideration. No doubt, this Court in A.A.O.No.3518 of 2004 held that the evidence of the doctor-P.W.2 cannot be looked into but basing on the other evidence, compensation can be granted. P.W.1 in his evidence clearly stated about receiving grievous and simple injuries and the same was supported by Ex.A.3 injury certificate.

15. As far as the quantum of compensation is concerned, the Tribunal, without considering the documentary evidence Exs.A.1 and A.2, erred in holding that the petitioner failed to prove that the accident occurred due to the rash and negligent driving of the rider of the scooter AP-25-B-5373 and the petitioner is entitled for compensation for one grievous injury and one simple injury. The petitioner, no doubt, was admitted in the hospital on 09.11.1999 and was discharged on 24.11.1999. Therefore, he took treatment for a considerable period in the hospital. There is no contra evidence to show that P.W.1 has not sustained any injuries. Therefore, for grievous injury, the petitioner is entitled for an amount of Rs.10,000/- and for simple injury, an amount of Rs.5,000/-. The petitioner is also entitled for an amount of Rs.5,000/- towards medical expenses and Rs.5,000/- towards extra nourishment and other charges. Though the petitioner claimed that he was running a cycle taxi business and also doing agriculture, there is no evidence produced to prove the said fact. Admittedly, the petitioner was in hospital for a considerable period and during that period and subsequently, he must not have attended any work and therefore, an amount of Rs.5,000/- was awarded towards loss of income. Thus, a total compensation of Rs.30,000/- is awarded to the petitioner-appellant.

16. As far as the rate of interest is concerned, in view of different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service*** and ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***, I am of the view that interest at 7.5% per annum shall be awarded on the amount from the date of appeal till the date of realization.

17. In view of the above discussion, the appeal is allowed setting aside the judgment and decree dated 16.03.2005 passed by Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge at Nizamabad, in O.P.No.128 of

2000 and by awarding compensation of Rs.30,000/- to the appellant and with interest @ 7.5% per annum from the date of petition till the date of realization. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(ANIS, J)

1st October 2015

RRB