

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.CM.A. M.P. No. 4609 OF 2012

IN / AND

M.A.C.M.A.No.2800 of 2015

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JUDGMENT:

The appellant—injured claimant filed this appeal having been aggrieved by the dismissal Order/Award of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge (FTC), Warangal, (for short, 'Tribunal') in M.V.O.P.No.615 of 2007 dated 05.01.2012 for Rs.2,00,000/- for the injuries sustained to him, against three respondents viz., owner of the crime vehicle—respondent No.1 insured with respondents Nos.2 & 3 filed under Section 166 (1) (a) of the Motor Vehicle Act, 1988 (for short, 'the Act').

2) The respondents Nos.1 and 2—owner of the crime vehicle insured with 2nd respondent remained ex parte before the Tribunal and even dismissed for default in the appeal since impleaded, it is no way fatal to the appeal as per the decision of Division Bench of this Court in ***Meka Chakra Rao vs Yelubandi Babu Rao***^[1].

3) Heard and perused the material on record including the reasons assigned for the delay of 49 days in filing the appeal, and the delay is condoned, subject to not entitled to interest till date on enhancement of compensation if any.

4) The brief averments of the claim are that on 13.01.2006 at about 9.30 am when he along with his son namely Raju while crossing the road at Mettugutta Arch of

Madikonda Village, then an auto bearing No.AP 36 U 6008 driven by its driver by name Kale Kumara Swamy with high speed and negligent driving of its driver—Kumara Swamy, dashed the injured, as a result, he sustained injuries and was shifted to Ganesh Orthopaedic Hospital. There he was treated at inpatient and surgery was performed on 16.01.2006 and the doctor who performed surgery advised him to take three months bed rest and discharged. The son of the injured reported to police about nine days after the occurrence covered by Crime No.7 of 2006 and the police after investigation, according to him filed final report by Ex.A3—Charge sheet and therefrom entitled to compensation. The claim was opposed by 1st respondent as well as respondents 2 and 3 its insurers in saying the vehicle even covered by Insurance the claim is untrue for non-involvement of the vehicle and claimant has to strictly prove all the allegations by specific denial of claim petition averments. From the above, during trial on behalf of the parties, the evidence placed on record is that of complainant—PW.1 and so-called eye witness—PW.2 with reference to Exs.A1 to A6, the investigator/surveyor—RW1 with reference to Exs.B1 and B2.

5) The Tribunal observed therefrom that the alleged accident was said to have been occurred on 13.01.2006 at Mettugutta Arch of Madikonda Village near Hanamkonda, for which the report given by son of the injured was 9 days later by implicating the vehicle of 1st respondent without even giving any explanation for the delay in reporting the crime in

dismissing the claim.

6) It is aggrieved by the same, the present appeal is filed impugning the correctness of the findings of the Tribunal in seeking to set aside and to allow the claim as prayed for. Whereas the Insurer opposes the appeal supporting the award of the Tribunal.

7) Heard. Perused the material on record.

8) It is important to note that there was no hospital intimation about the medico legal case of the alleged accident occurred, if at all true. The Doctor—PW.3 of the hospital not even produced any case record or hospital record as to the admission and for what cause of injury and as to manner of accident. Further more, the Tribunal observed rightly that, PW.1—injured himself in his cross examination deposed as to ignorance of the several aspects deposed in chief examination and deposed about the alleged accident took place at Parkal, which is not even near to Madikonda Village much less Mettugutta Arch. Even PW.1 stated that one of his son—Raju with him at the time of alleged accident and while shifting to hospital they crossed three police stations and no where reported to police. It is unknown why said Raju did not even reported to police atleast on next day and why Mogili, another son of injured reported after 9 days. All these show the vehicle is planted after deliberations. It was, thereby the Tribunal dismissed the claim in substantiating the contention of respondents 2 & 3 through RW.1 covered by Ex.B1 of the independent investigator/ surveyor in saying the vehicle is not

at all involved and it was only subsequently roped for the injuries sustained otherwise, to make claim from vehicle Insurer.

9) Having regard to the above, when the Tribunal having fresh in mind recorded the evidence and rightly came to a conclusion from the admission of PW.1—injured himself regarding the alleged occurrence taken place at a different place and the FIR of son of the injured at 9 days after occurrence set up the accident at different place for the police to investigate and implicate even for no such accident occurred as claimed and thus there are no merits in the appeal.

10) Accordingly, the appeal is dismissed. No order as to costs.

11) Consequently, miscellaneous petitions, if any pending in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.15.12.2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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