

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.1073 of 2005

JUDGMENT:

The instant appeal is preferred by the 1st respondent in M.V.O.P.No.209 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Khammam (for short, 'the Tribunal'). Aggrieved by the order dated 21.02.2005, whereby and whereunder, the Tribunal awarded compensation of Rs.63,000/- as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the claimant-petitioner against the rider and owner of the Suzuki motorcycle bearing registration No.AP 16C 2824, arrayed as respondent Nos.1 and 2 therein, the rider preferred the instant appeal seeking to exonerate him from liability to pay compensation.

2. The appellant herein, who is rider of the accident vehicle, is respondent No.1, while respondent Nos.1 and 2, who are the claimant and owner of the accident vehicle respectively, were respondents in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 23.05.1999 at about 8-45 a.m., while the petitioner was proceeding on his Bajaj M80 motorcycle bearing registration No.AAH 7113 towards ZP centre from RTC bus stand on Khammam-Wyra road and when reached Muvva Laxmi Rajeswari Hospital, Khammam, the 1st respondent, who was also proceeding on the same direction, drove a Sujiki Samurai motorcycle bearing registration No.AP 16C 2824 in a rash and negligent manner dashed the petitioner's motorcycle from rear side, due to which, he fell down and sustained all over his person, he was immediately shifted to Government Hospital, Khammam for treatment, while he was in unconscious state. It was also reported to II Town Police Station, Khammam, and the Station House Officer registered a case in Crime No.86 of 1999 for the offence punishable under Section 338 I.P.C. against the 1st respondent. The petitioner claiming that he was 65 years old and hale and healthy owing to the extent of, since he sustained fracture of right maxilla and fracture of

lateral wall of right orbit, grievous injury to right cheek, injury on the eyebrow and other multiple injuries. He has been unable to pursue even his ordinary activities and he has taken treatment under various doctors, and, therefore, laid claim for Rs.1,00,000/- seeking joint and several liability against respondent Nos.1 and 2.

5. Respondent No.1-rider of the accident vehicle filed counter and states that the Court of I Additional Judicial Magistrate of First Class, Khammam in C.C.No.552 of 1999 has made an observation that there was a contradiction with regard to the crime vehicle, the evidence given before the Court by the witnesses with that of the statements they made under Section 161 Cr.P.C., and, therefore, it is clear that the vehicle involved in the accident in question was not the vehicle owned by the 2nd respondent herein and was allegedly driven by him stating that he has nothing to do with the accident, and, therefore, he is not liable to pay compensation and sought to dismiss the claim petition against him. Respondent No.2 has not filed counter.

6. The Tribunal, basing on the said pleadings putforth by the petitioner and the 1st respondent, framed the following issues:

- "1. Whether the accident took place due to rash and negligent driving of the driver of the vehicle/R.1?
2. Whether the petitioner is entitled to any compensation, if so, to what amount and from which of the respondents?
3. To what relief?"

7. During enquiry, the petitioner examined himself as P.W.1 besides examining four more witnesses as P.Ws.2 to 5 and marked Exs.A.1 to A.75 besides getting exhibited Exs.X.1 to X.4 to substantiate his claim; whereas, on behalf of respondent No.1-rider of the accident vehicle, one V.V.N.V.Rao was examined as R.W.1 and Ex.B.1, certified copy of judgment in C.C.No.552 of 1999 on the file of I Additional Judicial Magistrate of First Class, Khammam, was marked.

8. The Tribunal, basing on the circumstances that the 1st respondent despite having complete knowledge about the accident, but withheld himself from giving evidence before the Court and also placing reliance on the decisions of this Court in **Sanasapuri Samba Murthy v. K.Rama Rao** and **A.P.S.R.T.C., Hyderabad v. Smt. T.Yashoda and others** and having elaborately dealt with the contradiction referred to by the 1st respondent in his counter from Ex.B.1, the certified copy of judgment,

held that the said inconsistency mentioned in Ex.B.1 need not be taken into consideration in view of direct evidence of P.W.1, supported by the contents of Exs.A.1 and A.2, regarding confusion of the vehicle involved in the accident, and, thereby, held issue No.1 in favour of the petitioner by specifically observing that the 1st respondent drove the vehicle rashly and negligently, as a result of which, the accident had occurred. On issue No.2, the Tribunal taking into consideration the description of injuries in Ex.A.3-medical certificate and also placing reliance on the judgments of this Court in **Vemireddy Bhaskara Reddy v. Boddu Narendra Kumar** and **Ankinapalli Yanadamma and others v. G.Sreenivasulu Reddy**, granted Rs.7,00/- for four simple injuries, Rs.35,000/- for two grievous injuries, Rs.7,500/- towards pain and suffering and Rs.13,500/- towards medical and other expenses, and, thus, a total sum of Rs.63,000/- was granted as compensation with interest at 9% per annum with further direction as to withdrawal of the same.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence on record, that the Tribunal ought to have given weight to the finding recorded by the Criminal Court to the effect that the vehicle was not involved in the accident and the said finding was a well considered finding and that the claim of the petitioner ought to have been rejected as it was not based on the acceptable evidence, that there was no other evidence to support the evidence of the petitioner and even the Tribunal overlooked the circumstance that though the petitioner claimed that he fell unconscious soon after the accident, but as per his own evidence, he lodged the F.I.R. within 15 minutes of the accident, which would have been done, and, therefore, sought to set aside the order and decree passed by the Tribunal.

10. Heard Sri K.Venkat Rao, learned counsel for the appellant-rider of the accident vehicle (1st respondent before the Tribunal), and Sri Y.Pullu Rao, learned counsel for the 1st respondent herein, who is claimant before the Tribunal. No representation on behalf of the 2nd respondent-owner of the accident vehicle, though served with notice.

11. The short question that arises for consideration is, whether the order under challenge cannot be sustained ?

12. It is not in dispute that the 1st respondent was shown as accused in the calendar

case in C.C.No.552 of 1999 on the file of I Additional Judicial Magistrate of First Class, Khammam. At this stage, it is pertinent to mention that one V.V.N.V.Rao was originally examined as R.W.1 on 14.09.2004. His chief-examination in part was recorded on that day, which is thus:

"I further submit that a criminal case vide CC No.552/99 on the file of I Addl. JFCM, Khammam was registered against me alleging that I driven the vehicle i.e. Hero Honda Motorcycle bearing NO.AP 16C 2324 at the time of alleged accident. After elaborate enquiry the learned I Addl. J.F.C.M., Khammam had clearly observed that there is a contradiction with regard to crime vehicle in the evidence produced before the court by the witnesses and their 161 Cr.P.C. statements. The deposition of the witnesses are submitted herewith. From this it is crystal clear that the vehicle involved in the accident, in question, is not the vehicle owned by the 2nd respondent and was allegedly being driven at the time of accident, in question. In fact I have nothing to do with the alleged accident and I am not liable to pay any compensation much less the compensation claimed by the petitioner herein."

Later, his chief-examination in Court was deferred. Subsequently, respondent No.1 Vadlamudi Vasu, who is the present appellant, filed his affidavit in chief-examination, attested on 21.12.2004. When he was sought to be cross-examined, instead of respondent No.1, Vadlamudi Vasu, V.V.N.V.Rao appears to have stepped into the witness box and he was cross-examined by the learned counsel for the petitioner. Thus, the Tribunal, somehow, did not secure the presence of respondent No.1 for cross-examination. On the other hand, respondent No.1 having filed his affidavit in chief-examination, ought not to have allowed V.V.N.V.Rao, who stepped into the witness box and faced cross-examination in his place. When the material part of the record sent by the Tribunal is examined, it is to be found that the cross-examination portion of V.V.N.V.Rao was recorded on the affidavit in chief filed by respondent No.1. There appears to be no separate cross-examination of respondent No.1. Even in the order now under challenge, nothing is mentioned touching this aspect.

13. Be that as it may, the very circumstance that respondent No.1, having filed affidavit in chief-examination, despite the fact that he was prosecuted as an accused, as per Ex.B.1, still, failed to make himself available for cross-examination by the petitioner, is sufficient enough to hold that respondent No.1 appears to have deliberately did so, with a view to create some sort of confusion which gives rise to

an inescapable inference that only to evade his liability to pay the compensation, he appears to have resorted to such trick.

14. Thus, the above circumstance not only condemns the stand taken by respondent No.1 in opposing the claim made by the petitioner, but also lends assurance to the claim laid by the petitioner, more particularly, when the evidence of the petitioner as P.W.1 stood unchallenged and un-rebutted so far as identity of respondent No.1, as driver of the accident vehicle is concerned and driving it in a rash and negligent manner that has occasioned the accident in the instant case.

15. The judgment rendered in C.C.No.552 of 1999, marked as Ex.B.1, certainly would not set the effect of evidence of P.W.1 in identifying respondent No.1 as driver of the vehicle bearing No.AP 16C 2824 and driving it in a rash and negligent manner and causing the accident at naught. Further, the judgment rendered in a Criminal Court is not binding on Civil Court, in fact, only to the extent of result in that judgment/matter is relevant. Therefore, the finding recorded by the Tribunal, since based on proper appreciation of evidence, let in by the petitioner and well reasoned, does not suffer from any legal infirmity warranting interference. Thus, there is absolutely no merit in the instant appeal.

16. Therefore, the instant appeal is dismissed confirming the order and decree passed by the Tribunal. There shall be no order as to costs.

17. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

A. SHANKAR NARAYANA, J

10th April, 2015

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