

**HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**

**M.A.C.M.A. No.206 of 2010**

**JUDGMENT :**

The injured, who maintained O.P.No.791 of 2005 on the file of the Motor Accident Claims Tribunal-cum-I-Additional District Judge, Kurnool, (for short, 'the Tribunal') under Sections 163-A and 166 of the Motor Vehicles Act, for a compensation of Rs.1,50,000/- for the injuries sustained in the motor accident dated 10.07.2004 against respondents 1 and 2-owner and insurer of auto bearing No.AP 21 V 8738 with averments that while he was proceeding on his bike bearing No.AP 21 C 1580, at about 11.00 a.m. the crime auto dashed to the bike due to rash and negligent driving of the driver of the auto, as such, he fell down and sustained injuries, though the 1<sup>st</sup> respondent remained ex parte and the 2<sup>nd</sup> respondent contested the claim and from the evidence of PWs.1 to 3, Exs.A.1 to A.5 and RWs.1 and 2, Exs.B.1 and B.2, for the Tribunal dismissed the claim, it is impugning the same, present appeal is maintained.

2. Heard learned counsel for the claimant/appellant and also learned counsel for the respondents and perused the material on record.

3. The alleged accident was dated 10.07.2004. The statement of PW.1 appears recorded by the police on 08.04.2005 nearly nine months after the accident. It is the claim that immediately after the accident he was admitted in Government General Hospital, Kurnool. Had there been any truth of the medico legal admission, there must be

a hospital intimation to the police concerned or atleast to the local police, that is not forth coming. There is no explanation for the delay in reporting occurrence even for the seven months delay. The Ex.A.3-wound certificate shows, the claimant was admitted on 11.07.2004 at about 9.50 a.m. for the injuries said to have been sustained on 10.07.2004 at 11.00 p.m. as hit by auto and two wheeler, near Government General Hospital, Kurnool, as a road traffic accident case. It refers abrasion of left foot on medial aspect and tenderness over left foot and ankle swelling and x-ray dated 11.07.2004 shows fracture of tibia and fibula and thereby injury No.1 described as simple and injury No.2 as grievous. The certificate issued was on 08.04.2005 and there is a reference in the certificate saying the claimant admitted on 08.04.2005 at about 7.00 a.m. through P.C.No.2498. The evidence of PW.3-Orthopedic surgeon of Government General Hospital, Kurnool, is that on 20.12.2006 he examined the injured to assess his disability of the claimant for the old fracture of left ankle tibia and fibula with malunion and disfiguration of left ankle from which unable to sit, squat or walk freely, but for with limping and having gone through X-ray, the old fracture of fibula with plate and screws in position of lower 1/3<sup>rd</sup> found K-wire fixed, assessed the disability percentage at 25% as permanent partial. PW.3 further deposed that he did not give treatment to the claimant and he did not issue any wound certificate though he is working in the Government Hospital since 1991 and he did not go through the case

record in issuing Ex.A.5-disability certificate as member of the Medical Board and there is no shortening of left leg, but for walk with limp and because of pain only he is limping and denied the suggestion of no disability and he can lead normal life and there is no infection to the wound and he only requires removal of K wire in future. This disability certificate also no way helpful to establish the injuries sustained in the accident much less on 10.07.2004 at 11.00 p.m. Strangely, the claimant cause examined PW.2, driver of the auto of the 1<sup>st</sup> respondent, not even as a Court witness, much less any examination in cross. But saying on his side as if he dashed the bike of the injured on the fateful day from which the accident occurred while the injured was proceeding and while taking turn towards petrol bunk to reach road and at the turn the alleged accident taken place. In the cross-examination, he deposed that there was a criminal case registered and it was ended in compromise in Lok Adalat and denied the suggestion of the auto not involved and it is a false implication. In fact, the owner of the vehicle examined as RW.2 disputing the very accident and involvement of the auto. Once the wound certificate Ex.A.3 speaks, through police constable the claimant was admitted on 08.04.2005 as per Page 2 and the 1<sup>st</sup> page as if shows the accident was dated 11.07.2004 and according to the claimant the accident was in fact on 10.07.2004 at about 11.00 p.m. and to say there is alleged admission. There is no case sheet summoned even to clear the cloud and for the fact that if really admitted voluntarily on 11.07.2004 for

the accident alleged on 10.07.2004 at about 11.00 p.m., there should be police intimation of the Government Hospital to register the crime and there is seven months delay in reporting the occurrence. All these cumulatively show a false implication of the auto by cooked up the evidence of so-called auto driver and managed to get a Lok Adalat settlement of the crime against the driver of the auto even owner of the auto saying not involved, from the original case sheet when not produced and even in the course of hearing of arguments on 22.11.2016 having taken time by the counsel for the appellant/injured to produce original case record of the Government Hospital, no steps have been taken, much less any Government Hospital certificate with details of date of admission, through whom the claimant admitted and what injury, there is nothing for this Court while sitting in appeal to interfere.

4. Accordingly, the appeal is dismissed.

5. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

29<sup>th</sup> November 2016.

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**Dr. B. SIVA SANKARA RAO, J**