

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.51 OF 2010

JUDGMENT:

The injured claimant who maintained the claim in O.P.No.1223 of 2005 under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*) on the file of the learned Chairman of the Motor Accidents Claims Tribunal-cum-District Judge, Khammam (*for short, 'Tribunal'*), for compensation of Rs. 3,00,000/- against the respondents 1 and 2, owner and Insurer respectively of the auto bearing No. AP 20 V 5913 for the injuries sustained, in the motor accident dated 07.09.2003 with averments of said injuries caused by rash and negligent driving of the driver of said auto, while he was proceeding on his motor cycle bearing No. AP 20 B 9898, from the contest by 2nd respondent-Insurer for the 1st respondent-owner remained exparte, the tribunal by its award dated 09.10.2007 dismissed the claim of the claimant on the ground that the claimant failed to prove that the accident occurred due to involvement of the auto muchless due to any rash and negligent driving of the Auto by its driver. He thus, preferred the appeal impugning said award of the Tribunal, with the contentions in the grounds of appeal vis-à-vis the oral submissions during the course of hearing that the tribunal gravely erred in dismissing the claim petition on assumptions and presumptions without properly appreciating the evidence and even scope of enquiry under the Act is not like trial in a civil suit and totally ignored the oral and documentary evidence and hence, to set aside the award of the Tribunal by allowing appeal by granting compensation as prayed for.

2. Whereas, the 2nd respondent-Insurer, from the 1st respondent though served with notice did not turn up and taken as heard, submits

that the award of the tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere.

3. Heard both sides at length and perused the material available on record.

4. The evidence before the Tribunal is that of PWs.1 to 3, RWs.1 and 2, Exs.A.1 to A.16 and Ex.B.1, out of which mainly so far involvement of the auto if any concerned, the evidence of PWs.1 and 2, Exs.A.1 – FIR, Ex.A.2-Charge sheet and evidence of RWs.1 and 2 are relevant, of which coming to the pleadings and evidence with reference to the same, the father of the claim petitioner himself set the law into motion mentioning vehicle involved is A.P.20 V 2315 showing eye witness, who witnessed the accident given that number supra. The accident was dated 07.09.2003 at the evening 07.30PM or so and it is at or near Kotamma Oil Bunk, Sathupally on the main road from the alleged auto driven by its driver in a rash and negligent manner from which the injured fell down on the road and sustained fracture to his right leg knee and multiple injuries. Crime No.192 of 2003 registered was for the offence under Section 337 of IPC against driver of auto AP 20 V 2315 from the said report of the father of the claim petitioner. The FIR is exhibited. No doubt, charge sheet filed by the police shows another vehicle involved i.e. auto bearing No. AP 20 V 5913. Even for the police in filing the final report there appears no basis and that the contention of the insurer from the owner of the vehicle 1st respondent even remained exparte, the report given was even about 19 days after the occurrence. There is no explanation for the delay. It is therefrom, the truth stated more particularly from said evidence on record apparently of the vehicle of the 1st respondent insured with the 2nd respondent as involved from not any single digit or numerical in difference for no possibility of

committing such mistake, that too, in giving the report to the police after 20 days of accident. It is a clear case of false implication. Once such is the conclusion arrived by the Tribunal, for this Court while sitting in appeal even by re-appreciation there is nothing to interfere.

5. Accordingly and in the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 28.10.2016
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