

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.664 OF 2016

JUDGMENT:

The injured claimant of O.P. No.75 of 2003 maintained the claim under Section 166 of the Motor Vehicles Act for Rs.3,00,000/- for the injuries sustained by him and the motor accident dated 15.08.2002 saying while he was waiting on the left side of road for bus to come to his village at Putalapattu bus stand on national high way, the tractor trailer bearing Nos.AP 07 T 2675 and 2676 of the 1st respondent, owner, remained exparte and the 2nd respondent insurer contested the matter and the Tribunal ultimately held that the petitioner entitled to compensation of Rs.1,15,000/- for the injuries sustained by him. However, there is no responsibility or liability for the so called owner and insurer in saying it is a weaved story five days after the accident implicating the tractor-trailer to believe.

2. It is impugning the same, the present appeal is mtained with delay of 22 days seeking to condone saying due to lack of funds after certified copies in filing the appeal by negating the decision of the Tribunal and the contentions in the grounds of appeal are that having sustained head injury in the accident, he was shifted to Government hospital, Chittoor and therefrom to Vellore and treated having been operated on 25.08.2002 till discharge on 28.08.2002 and again admitted in Apollo Hospital, Aragonda on even date and treated till 15.09.2002 and he was student of II year B.Tech, by the date of accident and the five days delay in registering the F.I.R cannot be given credence thereby which was ignored by Tribunal in dismissing the claim even the manner of accident is proved from the evidence including of independent witness-P.W-2 besides that of P.W-3 who also in support of the claimant deposed and thereby sought for allowing the appeal.

3. Whereas, it is the contention of the learned counsel for the insurer that the Tribunal is right in its conclusion of false implication with

weaved story of five days after the accident of injuries sustained otherwise as if of involvement of the vehicle if at all in collusion with owner of the vehicle and thereby for this Court while sitting in appeal there is nothing to interfere and it no way prevents to maintain a claim against if at all in other vehicle involved against that real persons responsibility and sought for dismissal of the appeal.

4. The 1st respondent did not chose to appear. Heard and perused the material. Delay in preferring the appeal is condoned.

5. The fact that the accident occurred on 15.08.2002 under which the injured claimants sustained injuries the insurer though not disputing mainly disputing involvement of the tractor and trailer of the 1st respondent insured with the 2nd respondent that was believed by the Tribunal in dismissing the claim. In fact, there is evidence of P.Ws 1 to 3 of whom P.W-1 is the injured who deposed about the manner of accident in support of the claim petition stating the tractor and trailer of the 1st respondent due to negligence of its driver dashed from which he sustained injuries while he was waiting on road side on the fateful day at 5.45 A.M to go to his village Thalapulapalle at the national high way, what P.W-2 deposed is another eye witness according to him to the accident. The place of accident is very near to the bus stand. He was shifted to Government Hospital, Chottoor. Immediately after the accident and there from to Vellore where he undergone treatment as inpatient through Neurologist, for mainly the fractured injuries to the right parital region. In fact it is not the injured claimant and subsequently given the report nor there is any hospital intimation but P.W-3 who alleged the report in registering the crime by police. The factum of police filed charge sheet against driver of the 1st respondent after registration of the crime supra on 19.08.2002, from the investigation on 30.12.2002 of C.C. No.265 of 2002 for the injuries sustained in the accident by P.W-1 claimant at the place and time supra on 15.08.2002 substantiates the claim by petitioner/P.W-1 what P.W-3 deposed is on that day he came to

Putalapattu bus stop to go to Vellore and at that time he found P.W-1 with injuries on the side of road and identified from the identity card of his pocket and one Prasad shifted him to Government hospital and said P.W-3 went to Thalapulapalle to give information about the accident and returning Vellore, he came to know that no report was given to the police and therefore, he went to Putalapattu police station and lodged the report. In fact, the police station is by the side of said place of occurrence and the bus stop admitted even by P.W-3 and there is no information passed on to police and P.W-2 did not explain anything but for saying he identified the injured with injuries one Prasad shifted to Government Hospital and he left to Thalapulapalle for P.W-3 no doubt there is no further necessity that too after four days in presenting the report before the Police to register the crime muchless to make enquiry regarding giving of report or not. Further, Ex.A-3 the wound certificate shows the injured was allegedly found lying road side in an unconscious state and Ex.A-4 discharge summary also speaks the same of noticed lying in unconscious stage with injuries and brought and admitted and it is stated within three hours after the accident he was brought said discharge summary as referred supra was 25.08.2002 and he was immediately shifted to Government hospital and there from Vellore Hospital for the treatment to the injuries was mainly of right parital region. P.W-4, Neurosurgeon of C.M.C. hospital Vellore exhibited Ex.A-3 and A-4 referred supra. No doubt, it no way specifically refers the injuries caused in motor accident muchless of a particular vehicle involvement and what P.W-2 deposed that on that day morning he came to bus stop to go to Bangalore and he was while waiting, P.W-1 was also waiting on the left side of the road and a tractor trailer coming from Chittoor dashed P.W-1 from which he sustained injuries. Even P.W-2 did not give report though police station very near to the place of occurrence and what he stated of 2 ½ months later he returned from Bangalore to Poothalapattu and gave the statement to police. It is therefrom the Tribunal did not believe involvement of the vehicle tractor and trailer supra. No doubt, P.W-2's evidence shows to be artificial. Further, P.W-3's evidence shows his

presence and shifting of P.W-1/injured who was in unconscious is clear and he was admitted for the injuries establish the factum of injuries. There is nothing from the cross-examination to show the injuries could be possible otherwise and not of road accident. There is nothing even to show false implication of the vehicle of the 1st respondent muchless by saying if another vehicle involved it was not covered with anxious or some unidentified vehicle involved. When such is the case, when it establishes his sustained injuries and police station is very nearby to the place of accident and the police did not notice or take action, once he was injured lying on road side and shifted to hospital and even after treatment when he says about the involvement of the vehicle, mere delay is not a ground to dismiss the claim in the factual scenario and the Tribunal should have been considered the same instead of dismissing the claim.

6. Having regard to the above, the Tribunal should have been allowed the claim fixing liability on the owner and insurer of the vehicle since policy covers the risk under Ex.B-1. The injuries sustained are 10 cm long scalp tibia laceration and right retromostoid region with depressed bone fragments and C.T scan shows fracture of right parital region with subjural area and underline condition from which he was treated for ten days in C.M.C Hospital, Vellore that is proved from the evidence of P.W-4 thereby in all including for medical expenses, treatment, pain and sufferance Rs.1,00,000/- is the just compensation which the Tribunal could have been allowed against the respondents.

7. Accordingly and in the result, the appeal is allowed in part by awarding Rs.1,00,000/- compensation against the respondents 1 and 2 jointly and severally with interest at 7.5% p.a. only from the date of appeal i.e., on 16.02.2011 till the date of realization. There shall be no order as to costs.

8. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Date: 19-02-2016
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Dr. B. SIVA SANKARA RAO, J