

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A. No.522 of 2004

JUDGMENT:

The appellant—insurer is the 2nd respondent in O.P. No.633 of 1997 among two respondents including the owner of scooter bearing No.AP 25/A 5987, which is the claim made by the petitioner—injured under Section 166 of M.V Act (for short ‘the Act’) for compensation of Rs.2,00,000/- for the injuries sustained on 10.04.1997 in the scooter accident, from the alleged rash and negligent driving of 1st respondent while coming in opposite direction in dashing the scooter of the petitioner—injured.

2) The appellant as 2nd respondent to the claim petition contested before the Tribunal and opposed the claim stating that the claim is false and it is outcome of a false complaint of alleged accident, which is lodged after more than 3 months 12 days and thereby, the claimant is not entitled to compensation. That apart, there is no basis to believe the delay of 3 months 12 days in reporting the occurrence though the police station is half-a-furlong to the alleged place of occurrence and if really the accident took place, he could give a report on the same day or atleast immediately thereafter.

3) The 1st respondent—owner of the scooter insured with 2nd respondent—appellant herein, filed counter affidavit stating that the alleged accident has taken place due to rash and negligent driving of the scooter of injured himself and thereby, the 1st respondent is not liable for any compensation for his no fault.

4) During the course of trial, on behalf of petitioner, PW.1 and Dr.M.Hari Sharma—PW.2 were examined and Exs.A1 to A9 were marked. On behalf of respondent, RW.1—Assistant Administrator Officer of insurance company was examined and Ex.C1 was marked. Respondent No.1 did not come to witness box and among Exs.A1 to A9 and Ex.C1, there is no MVI report or scene observation report filed.

5) Whereas it is the contention of the learned counsel for injured claimant, who is 1st respondent to the appeal, that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere. Hence to dismiss the appeal.

6) Heard and perused the material on record.

7) The Tribunal awarded Rs.1,56,313/- with interest at 9% per annum with joint liability against respondents 1 and 2 vide award dated 26.08.2003 in O.P. No.633 of 1997 on the file of Motor Accidents Claims Tribunal (District Judge) at Nizamabad. It is impugning the same, the insurer maintained the appeal with the contentions in the grounds of appeal and in support of the counter contested before the Tribunal and the learned standing counsel for appellant—insurer while reiterating the same contended that the alleged accident is false and created one in collusion with the 1st respondent to the claim petition if any and no prudent man can believe of keeping quiet for more than 3 ½ months after the occurrence and later giving report all of a sudden.

8) A perusal of the record would show that on 10.04.1997, while the petitioner was proceeding on his scooter bearing No.AP 25B 5988 from Gandhi Chowk to Gajulpet and when he reached near Balraj Hotel at Pedda Bazar road, the scooter bearing No.AP 25/A 5987 came from opposite direction at high speed and in a rash and negligent manner and dashed the scooter of the petitioner from which he fell down on the road and sustained grievous injuries to his left leg and was shifted to the hospital of Dr.Devi Das, who temporarily treated the petitioner. As per the advice of Dr.Devi Das, he was shifted to NIMS hospital on the same day and was treated there for 32 days and operated thrice and skin grafting was also done. After discharge, he took further treatment in Apollo Hospital, Hyderabad, having incurred huge amount and was totally bedridden for six months and still he got permanent disability. Dr.Devi Das, in whose hospital he allegedly taken first aid, was not examined and no treatment record produced from the hospital of Dr.Devi Das. Though there is no bar to

undergo treatment in private hospital, in fact had it been a road accident case and had the cause been stated to the doctor, the said Dr. Devi Das should have intimated to the police concerned or atleast to the local police to say about the accident for crime registration. It was not done in the case on hand and even it is the Dr.Devi Das, who has to explain by coming into witness box as a material witness. PW.2—Dr.Harish Sharma has not even treated the petitioner by giving first aid. Even there is nothing to show from Ex.A3—xerox copy of discharge card of NIMS hospital, Hyderabad, as to the cause of injury for no admission record filed. There is nothing even from the NIMS hospital, if it is a medico legal case of any intimation to the police nearby or concerned, had it been a road accident, when he was admitted including after the first aid, at private hospital of Dr.Devi Das on the same day of occurrence. Thus, there is nothing to believe the version of the petitioner. There is no report even given by him through any of his relatives if at all it is a road accident. The mere filing of NIMS hospital case record of discharge summary with prescriptions or subsequent O.P card or any OP card of Vijay Health Care, Secunderabad no way proves the case of the petitioner much less from alleged disability certificate of the condition of the petitioner issued by PW.2 in collusion have no basis for the doctor to issue such certificate have not even shown or taken any fresh X-rays, to say what is the injury and what is the deformity still prevailing.

9) Before the trial Court, the Court observed that the 1st respondent has taken a plea that the accident took place on account of rash and negligent driving of petitioner himself and the 1st respondent did not chose to examine nor 2nd respondent—insurer cause examined any witness to support the contention of 1st respondent that the petitioner while riding scooter was negligent and contributed to the accident.

10) No doubt, as held by the Tribunal in para No.10 of the award, merely because there was delay in giving the complaint to the police about the accident, it cannot be said that the vehicle of R.1 was falsely implicated to claim compensation. However, in the case on hand, the Tribunal gravely

erred in not considering the facts and circumstances of the case as to what prevented the petitioner, if it all it is a road accident involving the vehicle of 1st respondent as outcome of rash and negligent driving while coming in opposite direction, to cause report the occurrence to the police either through hospital intimation or through any of his relative to the II town police station, which is hardly half a furlong to the place of occurrence.

11) When these are the material facts which are within the exclusive knowledge of the claim petitioner, which he has to plead and establish as contemplated by Section 106 of Evidence Act, mere alleged admission of the 1st respondent—scooterist of his vehicle allegedly involved in the accident even for the police to register the crime about 3 ½ months after the occurrence and to file charge sheet from the alleged admission and surrender cannot be the basis to mulk the Insurance company with liability. The Tribunal went wrong in fixing burden on the insurer ignoring the scope of Section 106 of Evidence Act. The burden is on the petitioner to plead and prove the involvement of the vehicle of the 1st respondent insured with 2nd respondent to make the claim. When these facts taken into consideration of no explanation for the delay in reporting the crime for 3 ½ months if really it is a road accident, it probablize the defence of the 2nd respondent—insurer to the claim petition including through the evidence of RW.1 that scooter of R1 insured with R2 even not involved, it is a false claim set up, thereby the Tribunal ought not to have allowed the claim petition against the 2nd respondent, but for if all by leaving it open to the petitioner if at all his scooter is insured and covered by any personal accidental claim to make a claim in any other appropriate forum.

12) Accordingly and in the result, the appeal is allowed by setting aside the award of the Tribunal and by exonerating the Insurance Company from liability. It is left open to the insurer/ appellant to recover back whatever amount paid pursuant to the award of the Tribunal and from any order of this Court. There is no order as to costs.

13) Consequently, miscellaneous petitions, if any pending in this

Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.01.07.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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