

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.M.A.No.1847 of 2004

JUDGMENT:

The claim petitioner in O.P.No.1284 of 2001 on the file of Motor Accidents Claims Tribunal-cum-I Additional District Judge, Visakhapatnam, maintained under Section 166 of Motor Vehicles Act (for short 'the Act') for a claim of Rs.3,00,000/- against the owner and insurer of the auto bearing No.AP-31-U-4079, from the contest by 2nd respondent-insurer from 1st respondent-owner of the auto remained exparte, from the evidence of PW.1-injured and PW.2-Dr. V.Madan Mohan, who treated the petitioner after discharge from Government Hospital, from wound certificate with reference to Exs.A.1 to A.10 and Ex.X1-case sheet issued by PW.2 and Exs.B1-policy and Ex.B2-particulars of driving license of the auto driver marked with consent and with no other evidence of 2nd respondent even, since dismissed the claim on 19.02.2004 with observation that as per the Ex.A1-FIR, accident was occurred due to the negligent driving of the rider of the bike in which the petitioner and another person were pillion riders in saying dashed against auto, which was coming in opposite direction and the subsequent development in evidence or filing of charge sheet against driver of the auto for his negligence and its admission of guilty, no way be given credence.

It is impugning the said dismissal of the claim the present appeal is maintained with the contentions in the grounds of appeal vis-à-vis the oral submissions, the Tribunal failed to appreciate the evidence before the Court and in not adverting statement in FIR that when involvement of auto is there from the FIR apart from

given much weight to the variance in the scooter number for not in dispute of the petitioner was pillion rider of the scooter, irrespective of the confession or non-clarity in the scooter for the claim is not against scooter owner and insurer, but for against the auto, the Tribunal ought to have at best fixed composite negligence on the scooterist and the auto driver in allowing the claim and thereby, sought for setting aside the dismissal order of the Tribunal and to allow the appeal as prayed for.

Whereas it is the contention of the learned counsel for the 2nd respondent insurer from the 1st respondent, who remained exparte as referred supra and later for default for notice not served and even representation of died and steps were to be taken and no steps taken, a party remained exparte in the Tribunal even not impleaded in the appeal no way fatal to the maintainability of the appeal vide **Meka Chakra Rao Vs. Yelubandi Babu Rao**¹ and same is recorded and that the award of the Tribunal holds good for this Court while sitting in the appeal, merely because some other view is possible and not a ground and sought for dismissal of the appeal from the award of the Tribunal is well considered and supported by reasons.

Heard and perused the material on record.

Even the FIR is with delay of 20 days that was not taken a ground much less to say an outcome of intervention of auto in question. The wound certificate Ex.A3 issued by PW.2 shows few hours of the accident dated 21.01.2001 at about 09.00 PM, he was admitted in the hospital i.e., by 02.00 AM (early hours of

¹ 2001 (1) ALT 495

22.01.2001). The wound certificate shows immediately after joining, X-ray taken for the injury shows compound comminuted fracture of both bones of right leg, fracture of 1st meta-tarsal right foot with deformity to the foot and right ankle and laceration of the right leg. Ex.A1-FIR speaks about the accident and the scooter ridden by G.Appala Naidu and it is triple riding, though it is mentioned he is a pillion rider and it speaks the scooter dashed the opposite coming auto. The petitioner in his evidence claimed as coolie. The opposite coming auto number no doubt not mentioned, but in saying the scooterist dashed opposite coming auto and the auto driver for the time being stopped and left and he did not notice auto number, thereby from the injuries sustained and after first aid, he was shifted to hospital of PW.2 and thereby there is delay in giving police report. The contention of the 2nd respondent insurer is denial of the involvement of auto itself in the claim petition, the claim made is against the auto. In fact the police after investigation from the material found the auto driver was at fault and the charge sheet filed against auto driver and not against both the scooterist and auto driver. It is the evidence on record that is criteria and not the pleadings or the document on which the pleadings based, if any. In fact, even in the pleadings the claim is against the auto and the charge sheet is also against the auto driver and the auto driver pleaded guilty for his fault and that too, when both the auto and scooter were proceeding in opposite direction, the accident was occurred in the night and the injured petitioner might not has drawn his attention of it carefully in saying auto driver at fault or not and when that was night, the trial Court committed wrong in ignoring the other material. The police

investigation covered by a charge sheet and plea of guilty by the auto driver and the charge sheet and evidence of PW.1 clearly show the auto number and name of the driver and the vehicle is undisputedly insured with 2nd respondent. In the factual scenario there is contributory composite negligence of the scooterist and auto driver while both vehicles are proceeding in opposite direction with FIR speaks as if the scooterist was at fault by kept silent about contribution of the auto driver. The Tribunal should have seen thereby from the size of the vehicle to fix liability on owner and insurer of the auto at least be fixed equal liability of 50% on the scooterist and 50% on the auto driver. The Tribunal committed wrong in totally dismissing the claim.

From this now coming to the injuries sustained, the wound certificate shows the compound fracture + fracture of meta-torsal of right foot and the accident was in February 2001 and thus, an amount of Rs.30,000/- for the said fractures is just compensation including the lacerated injury and simple injury and Rs.14,000/- towards medical expenses, treatment, loss of earning, attendant and transport charges, which comes to Rs.44,000/- and 50% liability to the respondents comes to Rs.22,000/- which the respondents are liable to pay with interest @ 7.5% per annum from the date of appeal.

Accordingly and in the result, the appeal is allowed in part by setting aside the dismissal order in O.P.No.1284 of 2001 by awarding Rs.22,000/- as compensation for the 50% liability of respondent Nos.1 & 2 with interest @ 7.5% per annum from the date of appeal till realization. Both the respondents are directed to

deposit the compensation amount in the Tribunal within one month from the date of receipt of a copy of this order. Otherwise, the claimant/appellant may execute and recover. On deposit or execution and recovery, the petitioner is permitted to withdraw the same.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 02.08.2016
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