

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.2457 of 2008

JUDGMENT:

The injured claimant of O.P.No.965 of 2003 on the file of the learned Chairman of the Motor Accidents Claims Tribunal-cum-VIII Addl. District Judge, Nizamabad, (*for short, 'Tribunal'*), filed u/s. 166 of the Act'), for compensation of Rs.10,00,000/- against the owner and insurer of the crime vehicle i.e. lorry bearing No.AP 13 T 4277 for the injuries sustained by him in the motor accident on 10.06.2003 while himself along with one K.Chakradhar Rao were proceeding on bicycle at the limits of Gundaram village, the crime lorry being driven by its driver in rash and negligent manner, came from backside and hit the bicycle of the injured claimant due to which both of them fell down and lorry ran over both of his legs and caused crush injuries and the claimant was shifted to Shashank hospital, Nizamabad where he was treated as in-patient for 15 days after conducting surgical operations to his legs, on contest by the Insurer from the 1st respondent remained *ex parte*, the tribunal passed award dated 17.03.2008 dismissing the claim with reference to the oral and documentary evidence, held the Insurer is not liable to pay any compensation. Impugning the same, the injured preferred the present appeal with the contentions in the grounds of appeal that the tribunal erred in disbelieving the evidence of P.W.2 Dr.Motilal an orthopedic surgeon who treated the injured claimant and issued Ex.A.3 Injury certificate and Ex.A.4 disability certificate and the finding of the tribunal that there is variance between the Ex.A.2 and oral evidence of P.Ws.1 and 2, thus the injured not sustained any injury, is totally incorrect. In fact, the Ex.A.1 and A.11 x-ray film clearly establish the injuries, that the tribunal erred in holding that the Ex.A.7 lab report and Ex.A.11 x-ray film would clearly show that the report was obtained

from Tirumala Pathological Laboratory and X-ray was taken from Bharat X-ray and ECG centre, Nizamabad which are not attached to the hospital of P.W.2 who claimed treated the injured claimant as such they are not true and they are procured for the purpose of this case. The tribunal further failed to consider the Ex.A.9 photograph which shows both legs of the claimant were amputated. Hence, to set aside the award of the tribunal by granting compensation as prayed for. The learned counsel for the injured-claimant reiterated the grounds of appeal during the course of hearing.

2. Heard the learned counsel for the 2nd respondent-Insurer, from the 1st respondent/ owner of the crime vehicle remained exparte before the tribunal, even impleaded and served not turned up, also taken as heard as per the expression of M.Chakr Rao v. Y.Baburao¹ and the same is recorded and perused the material on record.

3. It is not in dispute that the accident was occurred due to the rash and negligent driving of the driver of the lorry and the same was also held by the tribunal. It is only to decide therefrom on correctness of the finding of the tribunal of the claimant did not sustain any injuries in the accident. In this regard, the accident took place was on 10.06.2003. The Ex.A.1 F.I.R. was dated 10.06.2003. On perusal of the Ex.A.1 FIR, it shows that it was registered based on the report given to police on 10.06.2003 by one Iraveni Kishan, lorry cleaner but not by the injured-claimant on the same day of accident in the Nizamabad rural Police Station. Said informant Iraveni Kishan stated about the accident that 10.06.2003 while they were proceeding in crime lorry supra from Nizamabad to Gundaram with labourers to bring concrete when reached outskirts of Gundaram village at about 8.00 p.m. due to rash and negligent driving of driver of the lorry, it dashed to two persons and being uncontrolled turned turtle by road side. As

¹ 2001 (1) ALT 495 DB

a result, the claimant sustained grievous injury to his right leg and other labourers including the lorry driver were also sustained injuries. It further shows that two other persons by names Ismail-the claimant herein, and Chakradhara Rao were fell down on the road and the lorry ran over them causing crush injuries to both legs of the petitioner. Pursuant to it, the police filed Ex.A.2 chargesheet against the lorry driver supra.

4 During trial, the P.W.1 stated that immediately after the accident, he was admitted in Shashank hospital, Nizambad and treated as in-patient for about 30 days and underwent major operations to both his legs and P.W.2 Dr.Mothilal Naik stated that he examined and given treatment to the claimant in his hospital by name Shashank hospital on 10.06.2003, the date of accident for the injuries of Traumatic below knee amputation right side, traumatic above knee amputation left side, laceration over left arm and Abrasion over the left forehead and discharged on 15.07.2003 and issued Ex.A.3 medical certificate and Ex.A.4 discharge sheet and Ex.A.5 final bill.

5. On perusal of the charge sheet it shows that the petitioner was treated by Dr.T.Narsing Rao, Orthopaedic Surgeon of Tirumala hospital, Nizamabad contra to the evidence of P.Ws. 1 and 2. The Ex.A.4 discharge sheet shows that the date of admission as on 10.06.2003 and the date of discharge as 15.07.2003 but the certificate shows that it was issued on 21.06.2003 which is incredible and raises serious doubt about the taking of treatment by the claimant. During the evidence, the P.W.2 admits that though he is aware of need of bringing the case sheet of the patient to the Court, he did not bring it which clearly shows he did not give treatment to the claimant.

6. It is the admission of the P.W.2 that Vasavi digital studio colour lab, Tirumala Pathological lab and Bharath X-ray and ECG centre does not belong to him and he did not refer the claimant on 10.06.2003 to Tirumala

pathological laboratory, Nizamabad. Even the P.W.1 in his cross-examination admitted that during the period of medical treatment he did not go outside the Shashank hospital for any investigation. When such is the case, Ex.A.7 lab reports and Ex.A.11 X-ray films would clearly show that the reports are created for the purpose of the case. In view of the above it is not at all reliable to believe that the P.W.2 treated P.W.1 in his hospital or P.W.1 sustained injuries in the accident.

7. Thus the above evidence is suffice to say, the claimant procuring false evidence to make a false claim by managing everything. The M.V.I. report not even filed and the lorry was not submitted to examination which is crucial equally by the bicycle of the clamant. That is not even shown by police much less any claim of damage to the bicycle and the tribunal therefrom held rightly that it is a false implication, for some amputation suffered by the claimant somewhere in making the false claim. In fact, the insurance company issued notice to the 1st respondent-owner K.Srinivas of the vehicle from the claim maintained for the alleged accident said to have been occurred, why particulars not furnished and at least to furnish particulars including vehicle Registration Certificate, permit, driving license etc., and there was no response. The tribunal no doubt dismissed the claim in toto. Even once the tribunal came to conclusion rightly of the sustaining of the injuries in the accident is unbelievable since the evidence produced by the claimant is false and fabricated for the purpose of the case, there is nothing to interfere or reverse the said dismissal finding of the tribunal much less to make the insurer liable, for this Court while sitting in appeal.

8. In the result, the appeal is dismissed. There is no order as to costs. Pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:16.11.2016
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