

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.2850 OF 2005

JUDGMENT:

Aggrieved by the dismissal of petitioner's claim for Rs.3,00,000/- under Section 166(1)(a) of Motor Vehicles Act, 1988 read with Rule 455 of the A.P. Motor Vehicles Rules 1989 towards compensation for the injuries sustained by him in a road accident, he preferred the instant Civil Miscellaneous Appeal challenging the order and decree, dated 11-08-2005, in M.V.O.P. No.1436 of 2002, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - VII Additional District Judge (Fast Track Court), Nizamabad, Bodhan.

2. The appellant herein, who sustained injuries in a road accident, is the petitioner in the O.P. before the Tribunal while respondent Nos.1 and 2, who are owner and insurer, respectively of the Hero Honda Splendor Motorcycle bearing No.AP-25-G-7160 which involved in the accident, are respondent Nos.1 and 2 respectively.

3. For the sake of convenience, the parties herein are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4. The fact-situation would reveal that on 16-09-2002, while the petitioner was proceeding on Suzuki Motorcycle bearing No.AP-25-E-2619 as pillion rider being ridden by his friend one Megavath Shankar, when they reached Someshwar village at a turning near toddy shop, at about 12-00 noon, rider of a Hero Honda Splendor Motorcycle bearing No.AP-25-G-7160, ridden the same in a rash and negligent manner and hit the Suzuki Motorcycle on which the petitioner was proceeding, due to which, the petitioner fell down and sustained multiple fractures. He claims that he was shifted to Orthopaedic Hospital, Nizamabad, and he had undergone surgical intervention as inpatient and incurred more than Rs.80,000/- towards medical expenses till the date of filing claim petition, and, according to him, still he was taking treatment under private doctors at Nizamabad on account of fractures sustained by him. He became permanently disabled and, therefore, sought compensation of Rs.3,00,000/-.

5. Respondent No.1, owner of the Hero Honda Splendor Motorcycle that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the motorcycle involved in the accident, filed counter controverting the allegations levelled in the claim petition.

7. Based on the rival pleadings, the Tribunal framed the following three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

“1) Whether the motor vehicle accident occurred due to the rash and negligent driving of the vehicle Hero Honda Splendor Motor Cycle No.AP-25-G-7160 by its driver resulting in injuries to the petitioner?

2) Whether the petitioner is entitled for compensation? If so, what amount and from which of the respondents?

3) To what relief?”

8. During enquiry, the petitioner besides examining himself as PW.1, examined Dr. L. Ramulu as PW.2 and marked Exs.A-1 to

A-12. On behalf of the insurer, no witnesses were examined but marked an attested copy of the insurance policy of the motorcycle involved in the accident as Ex.B-1.

9. The Tribunal, on issue No.1, having found the evidence of PW.1 completely in variation in his cross-examination with the version he has spoken to in his chief-examination and also based on his admissions in his cross-examination, disbelieved his evidence and the claim.

10. The Tribunal has also made comments against the doctor, who was examined as PW.2 viz., L. Ramulu and also Exs.A-5 photostatcopy of wound certificate, A-8 photostat copy of medical certificate, A-12 X-ray films numbering three (3) and also Ex.A-6 disability certificate issued by PW.2 by observing that two of the X-ray films under Ex.A-12 are much earlier to the date of accident, and, therefore, issuance of disability certificate under Ex.A-6 by PW.2 based on the said X-ray films cuts the very root of the case of the petitioner and in arriving that PW.2 deliberately issued Ex.A-6 to enable the petitioner to claim compensation.

11. Yet another circumstance which prompted the Tribunal to disbelieve the case of the petitioner is that according to the petitioner's evidence as PW.1 and PW.2's evidence in his deposition, PW.1 was admitted in the hospital on 16.09.2002 in PW.2's hospital and he was operated on 16.09.2002 itself and was discharged on 25.09.2002. The Tribunal based on the said evidence, doubted as to why and how the Sub-Inspector of Police, Banswada referred the petitioner to the Government Hospital, Nizamabad on 20.09.2002 since by that date he was already in the hospital of PW.2 and, therefore, even disbelieved the same.

12. For the aforesaid reasons, the Tribunal opined

that it is doubtful that the accident occurred due to rash and negligent driving of the motorcycle belonging to respondent No.1 and that the petitioner sustained injuries in such accident, and, therefore, held issue No.1 against the petitioner. Consequently, the Tribunal held issue Nos.2 and 3 also against the petitioner resulting dismissal of the claim petition.

13. Aggrieved by the aforesaid order, the instant appeal is preferred by the petitioner requesting to set aside the impugned order and decree passed by the Tribunal raising various grounds based on the evidence of PW.2 and Exs.A-1 to A-12 stating that the Tribunal completely deviated in appreciating the evidence on record and, thereby, arrived at wrong conclusion which resulted in dismissal of the claim petition.

14. Heard Sri Y.S. Yellanand Gupta, learned counsel for the petitioner (appellant), and Sri Kota Subba Rao, learned counsel for respondent No.2, insurer.

15. Despite service of notice, none appears for respondent No.1, owner of the motorcycle involved in the accident.

16. Perused the impugned order and evidence let in by the parties, more particularly, evidence of PWs.1 and 2. In the light of Exs.A-6 to A-12, *ex facie*, it appears that

the claim made by the petitioner is untrue. In arriving at such opinion, there is concrete evidence on record through the admissions made by the petitioner himself as PW.1 in his cross-examination. The petitioner has taken varying stands as regards the manner in which, the accident alleged to have occurred. For better appreciation, it would be appropriate to extract what he has stated in the claim petition as against column No.10, in the claim petition, as regards the manner in which the accident said to have occurred, which he projects, thus:

“10. Whether the person That on 16-9-2002 the in respect of whom Petitioner alongwith his compensation is claimed friend Megavath Shankar was travelling by the were going on Suzuki motor Vehicle involved in the c y c l e No.AP-25-E-2619 accident. (Petitioner was travelling as a pillion rider), at about 12.00 noon at turning, near toddy shop, Someshwar Village, the rider of the motorcycle (Hero Honda) No.AP-25-G-7160 drove the motor cycle in a rash and negligent manner, with high speed, came in opposite direction and gave dash to the Suzuki motor cycle, on which the Petitioner was travelling as a pillion rider, due to which the Petitioner fell down and sustained injuries.”

Against column No.27, in paragraph No.2, he projects the

accident, thus:

“2. That on 16-9-2002 the Petitioner alongwith his friend Megavath Shankar were going on Suzuki motor cycle AP-25-E-2619 (Petitioner was travelling as a pillion rider), at about 12.00 noon when they reached Someshwar Vilalge, at turning, near toddy shop, mean time the rider of the motor cycle (Hero Honda) No.AP-25-G-7160 drove the motor cycle in a rash and negligent manner with high speed and gave dash to the Suzuki motor cycle, on which the Petitioner fell down and sustained fracture of both bones of left leg, multiple and greivous (Sic. grievous) injuries on head, chest, hands and on other parts of the body. Immediately the Petitioner was shifted to Deepa Orthopaedic Hospital, Nizamabad, where he was admitted as inpatient and underwent operations. So far, the Petitioner incurred morethan Rs.80,000/- towards his medical expenditure and he is still undergoing treatment from private doctors at Nizamabad.”

That has been his consistent version in the claim petition and when it comes to the documentary evidence, he gives positive admissions stating that while he was pedalling cycle from Ankole tanda to Banswada, a motorcycle came and hit him and that he does not remember the number of motorcycle. The admissions made by him in his cross-examination read thus:

“The accident took place on year back from this day. At the time of accident I was paddlying
(S i c . paddlying) cycle from Ankole to

Banswada. One motor cycle came and dashed to me. I do not remember the motor cycle number.”

When certain suggestions were made to him in his cross-examination in tune with the admissions made by him, he denied them.

17. Be that as it may, the version of the petitioner in his cross-examination itself is sufficient enough to discard his claim. It is not as though, that just basing on the admissions made in his cross-examination, such a finding can be arrived at.

18. There is yet another circumstance that being the complaint was lodged with four (4) days delay as can be gathered from Ex.A-1 First Information Report (FIR). The accident said to have occurred on 16.09.2002, whereas the complaint under Ex.A-1 was lodged on 20.09.2002 at 5.30 p.m. Thus, this one circumstance itself is sufficient enough to hold that the petitioner was not actually travelling on the motorcycle at the relevant time and, thus, it belies the manner in which the accident said to have occurred as projected in his claim petition.

19. Apart from the above, there are other circumstances on record to show that the accident said to have occurred to the petitioner, as projected by him, is untrue. According to the petitioner, he got treated himself in Deepa Orthopaedic Hospital, Nizamabad, belonging to

PW.2, who was a private practitioner during that time, and there he said to have undergone surgical interventions.

20. The petitioner has marked Exs.A-5 - photostat copy of the wound certificate and also Ex.A-8 - photostat copy of the medical certificate issued by PW.2. Ex.A-5, no doubt, shows some endorsement to the effect that Sub Inspector of Police, Banswada Police Station, referred the petitioner to the Government Hospital on 20.09.2002, which was four days after the accident alleged to have taken place, but, again the said certificate was issued by PW.2 himself affixing his seal, as if he was the Civil Assistant Surgeon working at that time in the Government Hospital. It appears that such a certificate was pressed into service as this Court made comments against PW.2, which in my view unnecessary to refer again with details.

21. Further, PW.2 has issued Ex.A-6 disability certificate and admits that based on X-ray films numbering three (3) in Ex.A-12, he has issued it. Himself and PW.1 categorically admitted in their cross-examination that two of the X-ray films relate to the dates prior to taking place of the alleged accident and one of them bears the date as "04.06.2001" and the other "11.7.2001", whereas the accident in question said to have taken place on 16.09.2002.

22. Thus, it is clear that the above referred exhibits

were pressed into service only with a view to claim compensation though, they did not relate to the alleged accident said to have taken place, as projected by the petitioner. This apart the petitioner failed to summon the medical superintendent from the Government Hospital along with the case sheet, in case he was really treated in the Government Hospital having got admitted.

23. For the aforesaid reasons, it is sufficient enough to reject the claim of the petitioner besides the other circumstances that according to him, he had undergone treatment from 16.9.2002 to 25.9.2002 in the hospital belonging to PW.2, in which case, there would not have been any occasion for him to get referred to the Government Hospital on 20.9.2002 by the Sub Inspector of Police, Banswada.

24. Suffice it to say that the findings recorded by the Tribunal and the conclusion arrived at are well reasoned, based on appreciation of evidence let in by the petitioner himself, as such, do not warrant interference at all.

25. Therefore, the appeal is dismissed confirming the impugned order in all respects. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending stand disposed of.

A. SHANKAR NARAYANA, J

March 11, 2016.

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