

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.2689 OF 2005

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JUDGMENT:

The injured claimant filed this appeal having been aggrieved by dismissal order/ award passed on 06.01.2003 in O.P. No.848 of 1999 on the file of Motor Vehicles Accidents Claims Tribunal – cum- II Additional District Judge at Naglonda (for short ‘the Tribunal’) under Section 166 of the Motor Vehicle Act, 1988 (for short ‘M.V. Act’) against two respondents i.e., owner of scooter bearing No.AP 24 E 1101 and its insurer vide policy No.31610110620913 for compensation of Rs.1,00,000/- for the injuries sustained in the motor accident dated 26.07.1999 and as on the date of accident the policy is stated to be in force.

2) Heard learned counsel for the appellant/ claimant, learned counsel for respondent No.1—driver of the vehicle and learned Standing counsel for respondent No.2—insurer of the vehicle. Perused the material on record.

3) The brief facts of the case are as under:

On 26.07.1999 at 5.45 pm, the injured was proceeding towards Samithi Office and while crossing the road, the scooter bearing No.AP 24 E 1101 came in a rash and negligent manner and dashed him, as a result of which he fell down and sustained fracture to both bones of his legs and was treated in a Government Hospital, Nalgonda as inpatient and that the injuries sustained by him affected his avocation as barber, besides cultivation.

4) The 1st respondent—owner of the scooter bearing No.AP 24 E 1101 disputing the accident and involvement of his vehicle, however, ultimately claimed that there is a policy of insurance since

vehicle insured with 2nd respondent, while asking to dismiss the said claim, if at all, in saying the insurer to indemnify the 2nd respondent also contended that rider of the scooter is a necessary party to show the involvement of the vehicle and the rider got license to ride the two wheeler.

5) A crime was registered against the rider of the vehicle No.AP 16 4835 covered by Ex.A1-FIR, on the report of Sreenaiah, who is not injured claimant but the brother-in-law of injured claimant. However, the scooter bearing No.AP 24 E 1101 is shown in the charge sheet and not the scooter bearing No.AP 16 4835 claimed to be involved in the accident as per FIR of Sreenaiah. It appears police filed final report charging the accused as rider of the scooter bearing No.AP 24 E 1101 of the 1st respondent.

6) The Tribunal ultimately dismissed the claim against both respondents i.e., owner and insurer of the vehicle, in support of their contention of the implication by hitting of the vehicle originally involved scooter bearing No.AP 16 4835. Before the Tribunal, there were two persons examined including injured claimant—PW.1 and another one is the so-called eye witness—Komira Venkataiah and Exs.A1 to A5 i.e., FIR, injury certificate, charge sheet, disability certificate, bunch of medical bills were marked on behalf of claimant. On behalf of respondents, there is no oral evidence let in but for Ex.B1—policy referred supra issued by respondent No.2 for the vehicle of respondent No.1 marked by consent.

7) In fact, it is not even a case of hit and run and there is nothing mentioned in Ex.A2—wound certificate any vehicle number by the injured claimant mentioned before the doctor but for sustained injuries in the accident. Even the person who set the law in motion by giving FIR by name Sreenaiah has not even furnished reasons as to what made him to give wrong scooter number in the FIR and not even

examined the Investigating Officer to say what is the basis in giving the wrong scoter number in the FIR.

8) Even the rider of the vehicle bearing No.AP 16 4835 or the rider of vehicle bearing No.AP 24 E 1101, as the case may be, none were examined. In fact, the injured claimant, if at all, got a doubt about the involvement of one of the two vehicles, he could have impleaded the other vehicle also to decide the claim and without which for not even any composite negligence or joint liability to make sustain the claim against one with any observation to recover from the other by compensating. Once such is the case, there is imperfect pleading and evidence, which lead the Tribunal to ultimately dismiss the claim. As the material shows one or the other of the two vehicles, if not both are involved in the accident, the matter requires to be remanded for fresh disposal with an opportunity to the injured claimant to implead the owner and insurer and rider of both the vehicles among others, who are already arrayed as respondent Nos.1 and 2 as co-respondents by filing application for amendment by virtue of this order under Order I Rule 10 (2) C.P.C and within (15) days from the date of receipt of this order with consequential amendment to be made. The matter is accordingly remanded to the Tribunal. The Tribunal shall give notice to the parties to be impleaded and the respondents 1 and 2 on record, inviting any counter and additional counter and rejoinder in main matter and to permit additional evidence and dispose of the claim at the earliest uninfluenced by the earlier observations of the Tribunal.

9) Accordingly and in the result for the foregoing observations, while setting aside the dismissal award of the Tribunal and by restoring the claim petition to file remanded the matter back to MACT-cum-II Additional District Judge, at Nalgonda, to dispose of the same afresh after impleadment of remaining of driver, owner and insurer of both vehicles with consequential amendment and after

receiving counter and additional counter and by recording further evidence including by recall of witnesses already examined and to dispose of the same afresh on own merits and uninfluenced by the earlier dismissal award of the Tribunal. There is no order as to costs of the appeal. The costs of the claim petition being determined on merits from final result of the remand lis by the Tribunal.

10) Consequently, miscellaneous petitions, pending if any in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.23.03.2016
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