

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.30 of 2013

JUDGMENT:

This appeal is arising out of the Judgment and Decree, dated 24.08.2012, passed in MVOP.No.113 of 2005 by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Krishna at Machilipatnam (for short, the Tribunal).

2. The appellant herein is the United India Insurance Company Limited, aggrieved by the Judgment and Decree passed by the Tribunal awarding compensation of Rs.20 lakhs to the claimants, respondents 1 to 3 herein, has preferred this appeal.

3. The brief facts of the case are that on 26.12.2004 while the deceased Chilukoti Venkata Krishna Rao was going on his Hero Honda motorcycle from Chittiguduru to Gudivada, and when he reached Veerailanka Cross Road, one LML Vespa scooter bearing No.AP16Q 7868, driven by the first respondent in a rash and negligent manner, dashed the Hero Honda motorcycle. The deceased fell on the road and sustained head injury and other injuries all over his body. He was taken to Machilipatnam Government Hospital, and from there, he was shifted to Global Hospital, Vijayawada for better treatment. He succumbed to injuries on 09.01.2005 due to the injuries sustained by him in the accident. Guduru Police registered a case in Crime No.72/2004 under Section 304-A IPC against the first respondent. The deceased was working as a Bank Manager by the date of accident.

The legal heirs of the deceased have claimed compensation of Rs.20 lakhs against respondent Nos.1 to 3, the driver, the owner and the insurer of the crime vehicle, LML Vespa scooter.

4. The first respondent is rider of the LML Vespa scooter. He stated in his counter that while he was riding the LML Vespa on 26.12.2004, at about 6.00 pm., the deceased had driven Hero Honda motorcycle at a high speed, in a rash and negligent manner, in a drunken condition, dashed his LML Vespa scooter from his rear side, and that his driving licence was in force till 07.10.2007, and that LML Vespa scooter was having valid insurance by the date of accident. Therefore, he sought for dismissal of the petition against him as there is no negligence on his behalf.

5. The second respondent filed his counter alleging that the first respondent has got valid driving licence to drive the LML Vespa scooter and the scooter was having valid insurance by the date of accident.

6. The third respondent – insurance company filed its counter denying the manner in which the accident has occurred and alleging that the accident has occurred due to the rash and negligent driving of the driver of LML Vespa scooter belonging to the first respondent. It is also stated that the accident has occurred, as the Hero Honda motorcycle hit against an auto rickshaw, but FIR was filed with false allegations stating that the accident occurred

due to the rash and negligent driving of the rider of the LML Vespa scooter.

7. The third respondent filed additional counter stating that the accident has occurred due to the rash and negligent driving of the rider of Hero Honda motorcycle. The deceased was in the drunken state at the time of riding the Hero Honda motorcycle, and due to his negligence, he dashed the Bajaj Chetak scooter bearing No.AP16AE 3427 from its rear side. Thereafter, he went and dashed against an auto rickshaw. There is no insurance policy for the said Bajaj Chetak scooter, as such, LML Vespa scooter was planted by the first respondent, as the second respondent is his friend and was having valid insurance policy for the LML Vespa scooter.

8. The Tribunal, on consideration of the evidence of PWs.1 to 4 and the documents Exs.A.1 to A.9 and also the evidence of RWs.1 to 4 and the documents Exs.B.1 to B.12, has arrived at the conclusion that the accident has occurred when the LML Vespa scooter has dashed the Hero Honda motorcycle from its rear side and held the rider of the LML Vespa scooter liable for the accident, and awarded compensation of Rs.20 lakhs, claimed by the petitioners.

9. Heard the arguments of Sri A.V.K.S. Prasad, learned counsel for the appellant and Sri Narasimha Rao Gudiseva, learned counsel for respondent Nos.1 to 3.

10. It is contended on behalf of the appellant – insurance company that the award passed by the Tribunal is illegal and perverse. As per the endorsement made by the medical officer R.W.3 that “Hero Honda motorcycle hit to an auto rickshaw while driving motor bike around 6.30 pm on 26.12.2004”. It is argued that the endorsement in Ex.B.3 shows that the accident occurred when the Hero Honda motorcycle hit an auto rickshaw. Therefore the version of the petitioner that the accident occurred when the LML Vespa scooter had hit from rear side of the Hero Honda motorcycle is not correct.

11. Learned counsel for the appellant contended that the statements of PWs.2 and 3 are inconsistent with the contents of Ex.B.3. It is argued that though P.W.2 said to be an eye witness to the accident, he has given inconsistent statement in his evidence. At the first instance, in his chief examination, he deposed that “on that day I noticed one Hero Honda motorcycle dashed Scooter due to which one Ch.Krishnarao received injuries. The Scooterist dashed Hero Honda motorcycle on its back”.

12. Learned counsel for the appellant further contended that the deceased, while riding Hero Honda motorcycle in a drunken condition in a rash and negligent manner, dashed against the LML Vespa scooter. It is further contended that in the light of the endorsement in the hospital intimation Ex.B.3, the Hero Honda motorcycle dashed against an auto, and therefore, there is no negligence on the part of the rider of the LML Vespa scooter, and

hence, the insurance company is not liable to pay any compensation to the claimants and the findings of the Tribunal are perverse, as such, they are liable to be set aside.

13. Learned counsel for respondent Nos.1 to 3 would submit that the Tribunal had appreciated the evidence of eye witnesses P.Ws.2 and 3, who have categorically stated that the scooterist dashed Hero Honda motorcycle from its rear side. They, being eye witnesses, their testimony is reliable and credit worthy.

14. Learned counsel for the appellant further contended that if really the LML Vespa scooter is involved in the accident, the police would have sent the vehicle for inspection by the concerned Motor Vehicle Inspector. But, in this case, the police did not refer the crime vehicle for inspection. It is further submitted that the FIR does not contain registration number of the LML Vespa scooter, and in the light of these facts, it can be inferred that the LML Vespa scooter is planted in this case for compensation. It is further submitted that in the charge sheet, it is mentioned that the Hero Honda motorcycle dashed the scooter from its rear side and it would further strengthen the case of the insurance company that the scooter is planted in this case in order to get the compensation.

15. Learned counsel for respondent Nos.1 to 3, referring to the testimony of R.W.3 – medical officer, who has clarified about the inconsistency with regard to involvement of the LML Vespa scooter.

It is appropriate to refer to a portion of cross-examination of R.W.3 for appreciation of evidence.

“Case sheet was prepared by me. It is true that it was not mentioned in my letter whether the injured was hit by auto, while he was passing through a road, or whether the injured was travelling in auto as passenger at the time of accident. It is not true to suggest that due to heavy rush in the hospital, I was in the bit of confusion and that I wrongly mentioned in my letter as if the accident occurred due to auto even though the attendants did not inform the cause of accident. It is true that there is out post police station in my hospital. Generally out post police station would also have been informed about the accident by the concerned police station.”

16. It is contended by the learned counsel for the appellant that the cousins of the deceased were present at the time of the accident, and they have taken the deceased in an auto to the hospital where they have informed the medical officer that the accident occurred when the Hero Honda motorcycle dashed against the auto.

17. As far as this contention is concerned, the two cousins said to have witnessed the accident, and gave intimation to the medical officer, were not examined in the present OP as witnesses. The person who lodged the FIR is said to be a cousin of the deceased, and he was also not examined as a witness in the present OP. In the light of the cross-examination of R.W.3 referred above, it is obvious that he has clarified about what he endorsed in the hospital intimation – Ex.B.3. He clearly stated that it was not mentioned in his letter whether the injured was hit by auto while he was passing through a road or whether the injured was travelling in an auto as a passenger at the time of accident.

However, it is not safe to rely on the endorsement made by the medical officer, in the light of clear and categorical evidence of P.W.2 and P.W.3 who are eye witnesses to the accident, and also in the light of cross examination of R.W.3.

18. In this regard, the Tribunal has properly appreciated the evidence of witnesses P.Ws.2 and 3 and the contents of Ex.A.1 and came to the conclusion that reliance cannot be placed on Ex.B.3 with regard to involvement of the auto in the accident.

19. Learned counsel for the appellant further contended that the registration number of the LML Vespa scooter has not been mentioned in the FIR nor it was spoken by the witnesses P.Ws.2 and 3, who are said to be eye witnesses.

20. In para 13 of the judgment, the Tribunal has considered the evidence of RWs.1 and 2 and the evidence of witnesses PWs.2 and 3 and concluded that the accident occurred due to the rash and negligent driving of the rider of the LML Vespa scooter. The Tribunal also placed reliance on Ex.A.6 – charge sheet and came to the conclusion that the police found that it is the LML Vespa scooter bearing No.AP16Q 7868 which was involved in the accident.

21. It is contended by the learned counsel for respondent Nos.1 to 3 that the insurance company has taken inconsistent pleas. On one hand, it has contended that the Hero Honda motorcycle has dashed the LML Vespa scooter from its rear side, and on the other hand, it has contended that the Hero Honda motorcycle has dashed

against an auto. It is further submitted that the Tribunal has properly appreciated the evidence on record and arrived at proper conclusion basing on the testimony of PWs.2 and 3, the eye witnesses and also the documents, and therefore, the allegation that the LML Vespa scooter is planted in this case is not probable.

22. Learned counsel for the appellant would further contend that the police did not send the crime vehicle for inspection by the concerned Motor Vehicle Inspector and the laches on the part of the police would also raise suspicion about the planting of the vehicle in this case.

23. As far as this contention is concerned, the laches in the investigation conducted by the police would not make the investigation suspect. The Tribunal considering the entire evidence and arrived at the conclusion that the LML Vespa scooter is involved in the accident, and awarded compensation.

24. Learned counsel for the appellant further contended that rough sketch of the scene of offence does not show the registration number of the scooter involved in the accident.

25. Usually, the rough sketch of the scene of offence would reflect the physical features of the scene of offence. Ex.B.4 is the rough sketch in crime No.72/2004 registered under Section 337 IPC of Gudur Police Station. Usually, in rough sketch of scene of offence, the particulars of the vehicles are not being furnished. Therefore, I do not see any force in the above contention.

26. Learned counsel for the appellant further contended that since P.Ws.2 and 3 did not state the registration number of the scooter in their evidence, their evidence is not trustworthy. He further contended that according to the claimants, the scooter hit the motorcycle from its rear side, whereas in the charge sheet, it was shown as an accident due to head on collision.

27. As a matter of fact, the charge sheet is the substance of the investigation conducted by the police. It has no evidentiary value. It can neither be used for corroboration, nor for contradiction of evidence like FIR under Section 154, or like 161 Cr.P.C. statement or like 164 statement. Charge sheet is not a statement of any witness. It is only the sum and substance of the investigation conducted by the investigating officer.

28. However, as pointed out by the learned counsel for the appellant, it is mentioned in the charge sheet that Hero Honda motorcycle and the scooter have dashed against each other in opposite direction. In the light of the testimony of the eye witnesses PWs.2 and 3 and the contents of FIR – Ex.A.1, the lapses and mistakes committed by the investigating officer in not sending the Hero Honda motorcycle for inspection by the concerned Motor Vehicle Inspector would speak volumes. If really accident has occurred due to Hero Honda motorcycle, he would have sent it for Motor Vehicle Inspector's report. As the vehicle involved in the accident in case LML Vespa Scooter, there was no necessity for the Investigating Officer to send Hero Honda motorcycle for inspection

by Motor Vehicle Inspector. As far as this evidence is concerned, I do not see any valid ground to interfere with the findings of the Tribunal in arriving at the conclusion that the LML Vespa scooter was involved in the accident, and the rider of the LML Vespa scooter had driven it in a rash and negligent manner.

29. In the light of the foregoing reasons, I do not see any grounds to interfere with the findings of the Tribunal. It is pertinent to note that the insurance company has only raised contentions with regard to their liability in respect of the proof of rash and negligent act on the part of the vehicle involved in the accident. The quantum of compensation awarded by the Tribunal is not in dispute. It is also pertinent to note that the Tribunal has assessed the compensation at Rs.21,32,000/-, but restricted the claim to Rs.20,00,000/-. Therefore, there is no need to interfere with the quantum of compensation awarded by the Tribunal.

30. In the result, the appeal is dismissed and the Judgment and Decree dated 24.08.2012 in MVOP.No.113 of 2005 of the Tribunal is confirmed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

GUDISEVA SHYAM PRASAD, J.

Date: 21.06.2017
TJMR