

HON'BLE SRI JUSTICE M.S.K.JAI SWAL

M.A.C.M.A.No.792 of 2010

JUDGMENT:

The appeal is filed by the claimant through her father, whose claim of Rs.1,00,000/- for the injuries sustained by her in a road traffic accident on 16.12.2005 at about 9 p.m, involving TVS motorcycle, bearing registration No.AP28-AE7034 at Mallepally village was dismissed by the learned Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Nalgonda (for short "the Tribunal) in O.P.No.284 of 2006, dated 16.09.2009.

The facts in brief are that on 16.12.2005 at about 9 p.m while the injured was going along with her father at Mallepally village, one motorcycle bearing registration No.AP28-AE7034 came from behind in a rash and negligent manner and dashed the injured, due to which, she sustained injuries. The injured is a minor girl, aged about 8 years and hence her father moved the claim petition, being the natural guardian.

The respondent/Insurance Company filed the counter denying its liability and averments made in the claim petition.

On behalf of the claimant, P.W.1 was examined and got marked Exs.A.1 to A.5. On behalf of the respondent, no oral evidence was adduced, but the insurance policy was marked as Ex.B1.

The Tribunal, on consideration of the oral and documentary evidence, dismissed the claim petition.

The contention of the learned counsel for the appellant is that the Tribunal erred in rejecting the claim of the claimant on the ground that the medical certificate that is produced do not co-relate with the accident, said to have taken place on 16.12.2005 and also erred in not considering the oral evidence of PW 1, the father of the injured and therefore, the appeal.

On behalf of the respondent/insurance company, it is submitted that the documents that are produced by the claimant were self-contradictory as they clearly show that the injured sustained injuries on 22.12.2005 at about 8.20 p.m, but not on 16.12.2005 as claimed, and there is categorical admission from the father of the injured girl, who has been examined as PW 1 that the owner-cum-driver of the offending vehicle insured, i.e, the TVS was known to him. It is further submitted that it is a clear case where the petition has been filed for unjust enrichment taking advantage of the unfortunate injuries sustained by the victim girl on a day other than that has been set out.

Having heard both sides and perusal of the record, what is noticed is that the Tribunal has accepted the documentary evidence that is produced by the claimant himself for negating the claim of the claimant on the ground that the documents clearly disprove the claim of the claimant that the accident took place on 16.12.2005 and the documents show that the injuries that were treated by the Government hospital, Devarakonda were sustained by the victim girl on 22.12.2005 at 8.20 p.m but not on 16.12.2005.

The father of the victim girl has been examined as PW 1 and he speaks about the fact that his daughter Dhanamma sustained injuries in the accident occurred on 16.12.2005 at about 8.20 p.m while they were proceeding on road, the TVS vehicle which belong to the 1st respondent and insured with the 2nd respondent came behind them and dashed his daughter, due to which, his daughter fell down and sustained grievous injury i.e. loss of her tooth. However, it is further in his evidence that immediately after the accident, the girl was taken to Devarakonda hospital and for want of better treatment, she was referred to Neelopher hospital, and after undergoing treatment for nearly 6 days, she was brought to Devarakonda and lodged complaint before police and the police registered Ex.A1 First Information

Report. Ex.A2 is the certificate issued by the Government Hospital, Devarakonda which shows that the Doctor examined the victim girl on 22.12.2005 at about 10 p.m and found three injuries which were all fresh injuries, having been sustained about three hours prior to his examination. The Medical Officer also recorded that the injured claims to have sustained injuries in a road traffic accident on 22.12.2005 at 8.20 p.m. This certificate clearly shows that the injuries for which the compensation being claimed were sustained by the daughter of PW 1 on 22.12.2005, but not on 16.12.2005 on the date on which the alleged accident is said to have taken place involving the motorcycle being driven by the 1st respondent and insured by the 2nd respondent. The other medical prescriptions are not relevant, since they are obtained by the injured subsequently.

Added to that, there is delay of 6 days in lodging the complaint. There is no satisfactory explanation for the said delay and there is no evidence on record to show that on 16.12.2005 the injured was treated by any hospital.

The Tribunal has taken into consideration the above aspects and dismissed the claim petition of the claimant. Upon reappraisal of the evidence on record, I see no reason to differ with the opinion of the Tribunal.

Accordingly, the MACMA is dismissed. No order as costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 22.06.2017
Dsr

M.S.K.JAI SWAL,J