

**THE HON'BLE SRI JUSTICE G. SHYAM PRASAD**

**MA CMA No.2042 of 2010**

**ORDER:**

This appeal is arising out of the order and decree dated 10.10.2008 in MVOP No.338 of 2002 on the file of Motor Accidents Claims Tribunal-cum-III Additional Motor Accident Claims Tribunal, Nellore.

2. The appellant is the petitioner in O.P.No.338 of 2002 filed under Section 166 of the Motor Vehicles Act, 1939 for compensation of Rs.1,00,000/- on account of the injuries sustained by him in a motor vehicle accident on 31.05.2000 near Kakuturu bus stand on GNT Road, Nellore. The claim was made against respondent Nos.1 to 4, the owners and insurers of the vehicles involved in the accident viz., the Jeep bearing No.TN 09X 0644 and Ambassador Car bearing No.AP 9 AC 2708. The Tribunal on consideration of the evidence of the petitioner, P.Ws.1 to 3; the documents Exs.A1 to A13; the evidence of the respondents-R.Ws.1 and 2; and the documents Exs.B1 to B3, dismissed the OP holding that the petitioner is not entitled for any compensation from respondent Nos.1 to 4.

3. Heard the arguments of Sri Shiva Kalpana Reddy, learned counsel representing Sri Kuriti Bhaskar Rao, learned counsel for the appellant, and the arguments of Sri T.Ramulu, learned Standing Counsel for respondent No.4-New India Assurance Company. None appears on behalf of the United India Assurance Company-respondent No.2.

4. Learned counsel for the appellant submits that the Tribunal dismissed the claim of the appellant on two grounds: firstly, that the name of the claimant does not find place in the charge sheet and secondly, that the photo of the claimant affixed in the claim application does not show that he had received any injuries in the accident on his fore head and that there were no suture marks on the forehead. It is submitted that these two grounds do not stand for scrutiny for the reason that the appearance of the name of the injured in the charge sheet is not a compulsory requirement. In the light of the evidence available on record, the non-mentioning of the name of the claimant in the charge sheet does not raise any doubt with regard to the involvement of the petitioner in the accident.

5. Learned counsel for the respondent No.4 submits that since the name of the claimant does not find place in the charge sheet, it shows that he was not present at the time of the accident and therefore the Tribunal has rightly dismissed the claim of the claimant.

6. It is an admitted fact that the name of the claimant-injured does not find place in the charge sheet. As a matter of fact, charge sheet is the culmination of the investigation done by the investigating agency. When there is other evidence available on record, which is the direct evidence, the contents of the charge sheet need not be taken in to consideration. The charge sheet need not contain all the names of the injured in the accident. While issuing the charge sheet the name of one of the injured might escape the attention of the investigating agency. In the instant case

there is ample evidence on record to show that the claimant has received injuries in the accident. Learned counsel for the petitioner/appellant referred to FIR-Ex.A1 wherein the police gave intimation about the name of the injured.

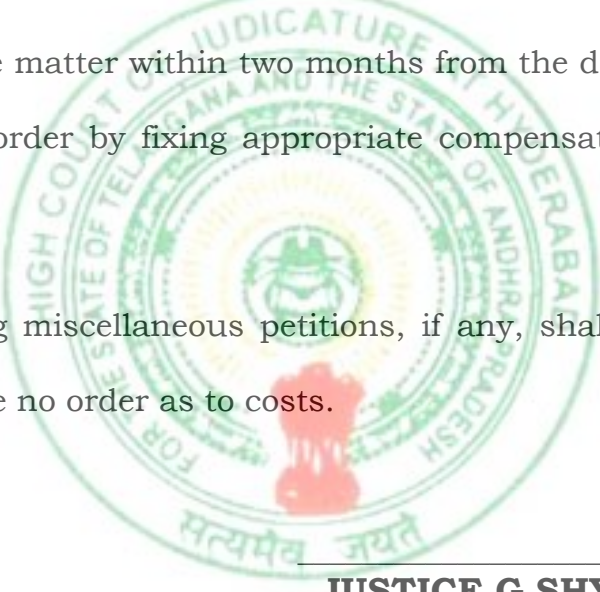
7. As per Ex.A1 the FIR was lodged by one of the passengers in the car by name Madhavayya. Basing on the complaint of Madhavayya, Ex.A1 has been issued. In the FIR the name of the injured claimant mentioning that they are giving intimation to the Government Hospital, Nellore about the injuries sustained by the injured in the accident. The First Information Report, which is the first in point of time, can be taken into consideration as a true document until the contents of the document are falsified by any other evidence.

8. Surprisingly, the Tribunal has considered photographs of the petitioner, which was said to have been affixed on the claim application that the photograph does not show that he received injuries on his face. On this finding, the Tribunal came to a conclusion that the petitioner is not involved in the accident and dismissed the application. The observations of the Tribunal in this regard are not based on any acceptable evidence. The said photographs basing on which the Tribunal gave findings is not brought to the notice of the respondent nor marked as a document in the OP for giving an opportunity to the other side to prove whether the photographs can be relied upon or not. The Tribunal placing reliance on the photograph available in the record appears to be an arbitrary finding.

9. On these two grounds, the Tribunal dismissed the claim petition and these findings are liable to be set aside. Therefore, the findings of the Tribunal dismissing the claim petition on the above two grounds are not sustainable and the order of the Tribunal is set aside and the matter is remitted to the Tribunal for fixing the quantum of the compensation.

10. In the result, MA CMA is disposed of and the order of the Tribunal is set aside. The matter is remitted to the trial court for the limited purpose of fixing the compensation which the appellant is entitled under Section 166 M.V.Act. The Tribunal is directed to dispose of the matter within two months from the date of receipt of copy of this order by fixing appropriate compensation entitled by the appellant.

Pending miscellaneous petitions, if any, shall stand closed.  
There shall be no order as to costs.



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**JUSTICE G.SHYAM PRASAD**

April 3, 2017  
LMV