

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 2219 OF 2006

JUDGMENT:

1. This Appeal is directed against the order, dated 16th December, 2004, in Original Petition No.423 of 1999 on the file the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-V Additional District Judge at Nizamabad (for short, 'the Tribunal').

2. Appellant herein is the petitioner, filed the above Original Petition before the Tribunal under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short, 'the Act'), claiming compensation of Rs.2,00,000/-, on account of injuries sustained by him in a motor vehicle accident occurred on 14.03.1999, against the respondents.

3. The Tribunal, on consideration of the evidence, dismissed the petition.

4. Aggrieved by the dismissal order, this appeal has been preferred for setting-aside the dismissal order, and for awarding compensation.

5. Heard Mr. S. Satyam Reddy, learned counsel for the appellant, and Mr. S. Agastya Sharma, learned standing counsel for the 2nd respondent-insurance company. The appeal against the 1st respondent-owner of the crime vehicle was dismissed for default *vide* order of this Court on 05.07.2016.

6. The points arise for consideration in this matter are:

1. Whether the order passed by the Tribunal is in accordance with law? And

2. Whether the appellant is entitled for compensation?

7. POINT Nos.1 and 2: This is an appeal filed against the dismissal order passed by the Tribunal. The appellant is claimant. The Tribunal, on consideration of the evidence adduced by the appellant, P.W.1, and the documents Exs.A-1 to A-10 and Ex.B-1, dismissed the petition suspecting the version of P.W.1 about the genuineness of lodging complaint, which is marked as Ex.A-1, on the ground that it was lodged three days after the accident. The other ground for dismissing the petition was that on the reverse of wound certificate, marked as Ex.A-4, there was an endorsement of Dr. K. Parvathi, who treated the appellant and issued wound certificate. The pleadings and the evidence adduced by the appellant, reveals that Dr. L. Ramulu and Dr. T. Narsing Rao along with other doctors at Government Hospital, Nizamabad treated and operated on him. The Tribunal has held that except the sole testimony of appellant, there is no material evidence on record to prove the manner of occurrence of accident. No doubt, the appellant got marked Exs.A-1 to A-10 on his behalf, but failed to examine the doctor, who treated him.

8. In view of the principle laid down by the Apex Court in *Raj Kumar Vs. Ajay Kumar and another*¹, it is the duty of the appellant to examine the medical officer, who treated him, to prove the nature of injuries suffered by him. Though the appellant got marked Exs.A-1 to A-10 and Ex.B-1, none of these documents were proved by adducing cogent and satisfactory evidence.

¹ 2011 (1) SCC 343

9. The delay in lodging the complaint has not been explained satisfactorily. There is a cloud cast on the case of the appellant about the occurrence of accident. The documents Exs.A.1 to A.10 are not proved by any evidence. The medical officer not examined to prove the nature of treatment undergone by the appellant. In the light of a decision of the High Court of Madhya Pradesh in National Insurance Co. Ltd v. Omprakash Manoharlal Jhala² and a decision of High Court of Chattisgarh in Smt.Sunder Bai v. Loop Singh³, the examination of medical officer is important for grant of compensation in cases of accident and death.

10. It is observed by the trial Court that the X-rays do not belong to the injured. It clearly reveals that this is not a genuine claim. Therefore, there are no grounds to set aside the award of the Tribunal, dismissing the Original Petition.

11. Therefore, I am of the considered view that there are no reasonable grounds to interfere with the order of dismissal passed by the Tribunal.

12. In the result, the appeal is dismissed.

13. As a sequel, pending miscellaneous petitions, if any, shall stand dismissed as infructuous. No order as to costs.

JUSTICE G.SHYAM PRASAD

Date.17.02.2017.
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² AIR 2011 (NOC) (Supp) 63 (MP)

³ AIR 2011 Chh 174 (DB)

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