

1HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 2317 OF 2006

JUDGMENT:

This Appeal is arising out of the order, dated 17.08.2006, passed in Motor Vehicle Original Petition No.419 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupati (for short, 'the Tribunal').

2. The appellant is the petitioner in M.V.O.P No.419 of 2003, filed under Section 166-1 (a) of the Motor Vehicles Act, 1988 claiming compensation of Rs.1,50,000/- for the injuries sustained by him in a motor vehicle accident occurred on 05.11.2002.

3. The brief facts of the case are that on 05.11.2002, when the appellant was traveling along with his brother as a pillion rider on a motorcycle bearing No.AP-03-J-6238, one lorry bearing No.AP-16-TT-4318 belonging to the 1st respondent came in a rash and negligent manner, and dashed against the motor cycle, due which the appellant fell down and sustained grievous injuries on his head, left leg and he was immediately admitted in SVIMS Hospital, Tirupati. Police registered a case against the driver of the lorry. The accident occurred due to rash and negligent driving of driver of the lorry. Due to the accident, the appellant sustained permanent disability and he claimed compensation of Rs.1,50,000/- against Respondent No.1 owner of the lorry and Respondent No.2 insurer of the lorry.

4. Respondent No.1 remained ex parte. R.2 filed counter while denying the liability of the insurance company alleging that the accident occurred due to rash and negligent driving of driver of the motorcycle.

5. The Tribunal, on consideration of evidence, dismissed the claim of the appellant on the ground that the accident did not occur due to fault of the driver of lorry, but it had occurred due to fault of rider of the motorcycle.

6. The appellant, being aggrieved by the impugned order dismissing O.P.No.419 of 2003, has preferred this appeal for setting aside the order and for grant of compensation.

7. Heard the arguments of Sri S.V.Muni Reddy, learned counsel for the appellant. The claim against Respondent No.1-owner of the lorry was dismissed for default. None appears for respondent No.2-National Insurance Company Ltd.

8. Learned counsel for the appellant submits that this is a case of injuries sustained by the appellant in a motor accident. The Tribunal held that there was no negligence on the part of the driver of lorry and entire negligence was attributed to the rider of the motorcycle and therefore, the findings of the Tribunal are liable to be set aside.

9. The Tribunal has extensively dealt minutely about the manner in which the accident has occurred. The Tribunal based on medical evidence held that the petitioner was under the influence of alcohol, which resulted in the accident.

10. It is contended by learned counsel for the appellant, that the appellant was only a pillion rider, and therefore the observation of the Tribunal that the accident occurred due to intoxication of the pillion rider is not relevant.

11. It appears that the Tribunal has again went wrong in fixing the liability, against the rider of the motorcycle, under the impression

that the appellant was rider of the vehicle, at the time of the accident. But, the appellant was only a pillion rider at the time of the accident. Though the appellant was under influence of alcohol the accident would not have occurred as he was not a rider of the motorcycle at that time. Except, the bald suggestion that the rider of the motorcycle was under intoxication, there is no medical evidence available on record to show that, the rider of the motorcycle was also under the influence of alcohol. But, the Tribunal held that the accident occurred due to the negligence of motorcyclist. Even if it is taken into consideration that there is some negligence on the part of the rider of the motor cycle, then the negligence can be apportioned between the riders' of the motorcycle and driver of lorry. It can be concluded as 50% each.

12. No doubt, the owner of the motorcycle, and insurer of the motorcycle are not examined, who are necessary parties in this petition.

13. It is pertinent to note that the appellant was a pillion rider on the motorcycle. The accident had occurred due to rash and negligent driving of driver of the lorry. Though it may be 50% on the part of the driver of the lorry, 50% negligence is on the part of the rider of the motorcycle. After considering the evidence on record, it is a case where the Tribunal ought to have apportioned the liability between the rider of motorcycle and the driver of the lorry at the ratio of 50% each. With these observations, the matter can be remanded back to the Tribunal to assess compensation 50% for the injuries sustained by the appellant in the motor vehicle accident.

14. The findings of the Tribunal are incorrect. Ex.P.5-discharge summary reveals that the petitioner met with an accident while travelling on motorcycle and he was under intoxication at that time. The petitioner did not fell down because of intoxication. There is no evidence on that aspect. The averment in the complaint is that rider and pillion rider are under intoxication. This aspect has no basis. It is not the case of respondent that the petitioner alone travelled on motorcycle. The Tribunal has inferred that the petitioner was rider of motorcycle and he was under intoxication and because of that the accident occurred.

15. P.W.1 stated in his evidence that he was pillion rider. Exs.A.1, A.2, FIR and Case Sheet reveal that he travelled as a pillion rider. EX.A.5 discharge summary says about the petitioner that he was under intoxication at the time of accident while traveling on motorcycle. Therefore, there is an ample evidence on record that the petitioner travelled as a pillion rider on motorcycle. The accident occurred due to rash and negligent driving of the lorry driver.

16. The Tribunal again inferred that the scene of offence is cleared. In fact, the evidence of P.W.1 was that while he was proceeding on extreme left side of the road near Sarovar circle, Trirupati, the accident occurred. The Tribunal observed that in FIR and charge sheet do not disclose as to when the accident occurred. If in FIR and Charge sheet it is not mentioned about the place of accident, how P.W.1 responsible for that is not known. Therefore, the finding of Tribunal that the accident did not occur due to rash and negligent driving of driver of lorry cannot be accepted. The finding of Tribunal that the accident occurred due to rash and negligent driving of the motorcycle by the petitioner, is in correct.

17. The insurer disputed the disability. It is acceded in counter that the rider and the pillion rider were in drunken condition. The accident occurred due to negligence of rider of motorcycle. The driver of lorry was not negligent, therefore, there is no liability for owner and insurer of the lorry as such they are not liable to pay any compensation. It is also contended that as the rider of motorcycle is negligent in riding the motorcycle, the owner and insurer are necessary parties.

18. The Tribunal relying on discharge summary-Ex.A.5 and basing on the evidence of medical officer, came to the conclusion that the rider of motorcycle was in intoxicated condition and driven the motorcycle, held that the rider of motorcycle was negligent, and consequently, held that the owner and insurer of motorcycle are necessary parties. Mis-joinder of necessary parties was held to be fatal to the case of the petitioner. Hence, the Tribunal dismissed the O.P. Ex.A.5 is discharge summary issued by SVIMS Hospital, Tirupati. It is stated in Ex.A.5 that the petitioner received injuries in road traffic accident while traveling on a two wheeler, under the influence of alcohol.

19. No doubt, Ex.A.5 discharge summary reveals that the petitioner received injuries in a road traffic accident while traveling on a two wheeler. It can be understood that if the petitioner alone had gone on motorcycle, he was only driving it, whereas there are two persons traveling on a motorcycle, the petitioner was said to be a pillion rider.

20. It is the contention of the insurer R-2 that both the pillion rider and rider are in drunken condition. If the petitioner is considered as

pillion rider, if he is in drunken in condition, no negligence can be attributed to him, as he was only a pillion rider and not rider of motorcycle.

21. In the result, the appeal is partly allowed setting aside the order, dated 17.08.2006, in O.P.No.419 of 2003 passed by the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupati and remanding the matter to the Tribunal to hear the matter afresh.

Miscellaneous petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

MARCH 10, 2017
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G. SHYAM PRASAD, J

HON'BLE SRI JUSTICE G. SHYAM PRASAD



M.A.C.M.A. No. 2317 OF 2006

Date: .02.2017

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