

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 426 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 27.09.2005, in M.V.O.P. No.2 of 2004 on the file the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-VII Additional District and Sessions Judge (Fast Track Court) Krishna at Vizayawada (for short, 'the Tribunal').

2. Appellant is the petitioner, 1st respondent is the driver, 2nd respondent is the owner and 3rd respondent is the insurer of Lorry bearing No.AP16TC 2045 in M.V.O.P. No.2 of 2004. The appellant claimed compensation of Rs.1,00,000/- on account of the injuries sustained by him in a motor vehicle accident.

3. The brief facts of the petition are that, on 28.02.2003, at about 04-00 p.m., while the appellant along with another was proceeding on a motor cycle bearing No.AP16R 8578 from Vijayawada to Gudavalli on National Highway - 5, the lorry which was proceeding in a rash and negligent manner in the same direction, being driven by 1st respondent, dashed the motorcycle of the appellant. As a result of which the appellant, who was a pillion rider, fell down and sustained severe injuries all over his body and the other person, who was driving the motorcycle, died instantaneously. Immediately, the appellant was shifted to Myneni Hospital, Vijayawada. A case in Crime No.96 of 2003 was registered by the Patamata P.S. against the concerned for the offence under

Sections 304-A and 338 of I.P.C. Hence, he claimed compensation of Rs.1,00,000/-.

4. Respondent No.1, driver of the crime vehicle, died during pendency of the proceedings before the Tribunal.

5. Respondent No.2, owner of the crime vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.3, insurer of the crime vehicle, filed written statement denying the rash and negligent act on the part of the driver of the crime vehicle and contended that the driver of the motor cycle himself was negligent and, hence, this respondent is not liable to pay compensation and sought for dismissal of the petition.

7. The Tribunal, on consideration of the pleadings and evidence of the witness PW.1 and the documents Exs.A-1 to A-7 and Ex.B-1, answered the first issue in favour of the appellant holding that the accident occurred due to rash and negligent driving of the driver of crime vehicle but dismissed the petition without awarding any compensation as the doctor who treated the appellant was not examined before the Tribunal.

8. Being aggrieved by the dismissal of the petition, the appellant preferred the instant Appeal seeking to set-aside the impugned order and award the compensation.

9. Heard Mrs. M. Uma Devi, learned counsel, representing Mr. T. Ravi Kumar, learned counsel for the appellant, and Mr. B.

Devananad, learned standing counsel for 3rd respondent-insurance company. The claim against respondent No.1, owner of the crime vehicle, was dismissed for default *vide* order of this Court on 14.07.2016. None appeared on behalf of the 2nd respondent.

10. The point for consideration in this matter is, whether there are sufficient grounds for setting-aside the impugned order and for awarding the compensation?

11. Learned counsel for the appellant mainly submitted that the Tribunal has dismissed the Petition only on the ground that the appellant did not examine the doctor, who treated him. Learned counsel further submits that the appellant has filed Exs.A-1 to A-7, attested copies of charge sheet, F.I.R, wound certificate, M.V.I Report, medical bills, insurance policy and the certificate issued by the doctor who treated him. These documents clearly prove that the accident had occurred on 28.02.2003 and the appellant had received injuries therein. The Tribunal, while answering issue No.1, held that the appellant was admitted in the Government hospital for the injuries sustained by him, due to the rash and negligent act of the driver of the crime vehicle. The Tribunal answered issue No.2 against the appellant mainly on the ground that non examination of the medical officer is fatal to his case. The Tribunal held that Exs.A-3 to A-7 were not proved.

12. It is obvious that the Apex Court in catena of decisions reiterated that though the medical officer is not examined but the injuries are proved in an accident, keeping in view the nature of

injuries, the claimants, who are victims of accidents, are entitled for compensation. There is no dispute with regard to involvement of the appellant in the accident. The only dispute herein is whether the appellant sustained any injuries and had undergone any corresponding treatment. Admittedly, the appellant filed the petition before the Tribunal in 2004 and preferred the Appeal in 2006. The appeal is seeing the light of the day after a period of ten years.

13. The Tribunal had believed the manner of accident, which occurred due to the rash and negligent driving of the driver of crime vehicle. It is a fact that Exs.A-5 to A-7 are medical bills, insurance policy and the certificate issued by a doctor, who treated PW.1. But, unfortunately, the appellant could not examine the medical officer, who treated him, to prove the medical bills and the nature of treatment undergone by him, which does not mean that the appellant is fraudulently claiming compensation in this matter. The Tribunal might have felt that as there was no evidence of medical officer, it could not assess the exact compensation towards the injuries suffered by the appellant. In case of this nature, it is appropriate for the Tribunal to assess the notional damages basing on the injuries suffered by the appellant. However, on behalf of the contesting respondent, except filing Ex.B-1, insurance policy, no evidence was let in to disprove the documents Exs.A-1 to A-7, except raising a bald contention that the medical officer is not examined. There is no evidence on record to disbelieve the documentary evidence. No doubt, whenever a document is

produced its author has to be examined. The Motor Vehicles Act, 1988 is a beneficial piece of legislation; the Evidence Act is not strictly applicable to this case, as such the evidence need not be proved beyond reasonable doubt as in criminal cases or preponderance of probabilities as in a civil case. The manner of evidence that can be taken into consideration in motor vehicle accident cases is in between the above two. To know the exact nature of injuries and for assessment of compensation, examination of medical officer is required.

14. Ex.A-1 is the charge sheet which shows that the Police registered the case against the accused for the offences under Section 304-A I.P.C. and Section 134(a) (b) read with Section 187 of the Motor Vehicles Act, on the instantaneous death of the rider and for receipt of injuries by the appellant, who was a pillion rider of motor vehicle bearing No.AP16R 8578. Ex.A-2 is the F.I.R. which shows that the Police registered the case for the offences under Sections 304-A and 338 of I.P.C. Ex.A-3 is the wound certificate which shows that the appellant suffered three injuries.

15. The only dispute in this matter is whether the Tribunal appreciated the evidence in proper perspective?

16. The Tribunal dismissed the Petition on the sole ground that the medical officer, who treated the appellant, was not examined and the medical bills were not proved though held that the accident had occurred due to the rash and negligent act of the driver of the crime vehicle.

17. However, in view of the facts and circumstances of the case and the document Ex.A-3, which shows that the appellant had suffered one fracture and two simple injuries, it would be appropriate to award an amount of Rs.15,000/- for the fracture injury, Rs.20,000/- for two simple injuries, and Rs.5,000/- for attendant charges. In all, the appellant is entitled for an amount of Rs.40,000/-

18. Accordingly, the impugned order of the Tribunal is set-aside. The Appeal is allowed in part granting an amount of Rs.40,000/- to the appellant, with interest at the rate of 7.5% p.a. from the date of petition till realization. Respondents 2 and 3 are jointly and severally liable to pay the compensation. They are directed to deposit the amount within two (2) months from the date of receipt of a copy of this judgment.

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

G. SHYAM PRASAD, J

Date: 02.02.2017.
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