

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 1985 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant, who is the petitioner in O.P. No.1125 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad (for short, 'the Tribunal'), aggrieved by the order dated 02.06.2006, whereby, the Tribunal dismissed the claim of the appellant filed under Section 166 of the Act, claiming an amount of Rs.11,50,000/- as compensation for the injuries sustained by him in a road accident occurred on 20.04.2001.

2. The appellant herein is the petitioner-injured, respondent Nos.1 to 3 herein are the driver, owner and insurer of the lorry bearing No.AAP 4039 and respondent No.4 is the insurer of the ambassador car bearing No.AHO 2704.

3. The parties hereinafter referred to as arrayed before the Tribunal in the original petition.

4. The case of the appellant-petitioner is that on 20.04.2001, the petitioner along with three others was travelling by ambassador car bearing No.AHO 2704 from Hyderabad to Vijayawada, at about 4-30 a.m., when the car reached Uma Holiday Inns Hotel, Paritala village, Kanchikacharla Mandal, a lorry bearing No.AAP 4039, driven by respondent No.1 in a rash and negligent manner and at high speed, came with a load of paper rolls and dashed against the ambassador car, due to which the petitioner, who was driving the car at the time of accident, and other inmates of car

sustained injuries and immediately, they were shifted to Nagarjuna Hospitals at Vijayawada, where the petitioner was treated till 27.04.2001, during which period, he was operated and plates were implanted for the fractures sustained on his right hand and thereafter, he was admitted in the NIMS Hospitals and treated therein till 26.05.2001 and incurred huge expenses towards medicines and treatment. Due to the injuries, the right hand of the petitioner become non-functionable and he lost his job in I.T.W. Signods Limited and he lost monthly income of Rs.8,650/-. Hence, he claimed Rs.11,50,000/- towards compensation from respondent Nos.1 to 3-driver, owner and insurer of the lorry, as well as from respondent No.4-insurer of the ambassador car.

5. Respondent Nos.1 and 2 remained *ex parte* before the Tribunal. Respondent No.3-insurer of the lorry filed counter before the Tribunal contending that the accident occurred only due to the rash and negligent driving of the petitioner himself and the F.I.R. and charge sheet established the said fact and therefore, respondent Nos.1 to 3 are not liable to pay any compensation to the petitioner.

6. Respondent No.4-insurer of the ambassador car, which was driven by the petitioner at the time of the accident, filed counter before the Tribunal contending that the insurance policy of the car does not cover the owner of the car, but covers only third parties and hence, prayed to dismiss the claim petition against it.

7. The Tribunal after framing three issues and upon considering the evidence of P.Ws.1 to 4 and R.Ws.1 and 2 and the documents Exs.A.1 to A.30 and Exs.B.1 to B.3, dismissed the claim petition, holding that the

accident occurred only due to the rash and negligent driving of the driver of the ambassador car, i.e., the petitioner herein, and the insurance policy of the ambassador car does not cover the risk of the owner and therefore, the petitioner is entitled to any compensation from any of the respondents. Challenging the said dismissal order, the petitioner-injured preferred this appeal.

8. Heard the learned counsel for the appellant-petitioner, the learned Standing Counsel for respondent No.3-insurer of the lorry and the learned Standing Counsel for respondent No.4-insurer of the ambassador car, apart from perusing the material available on record. Though served with notice, none appeared for respondent No.1-driver of the lorry. The appeal against respondent No.2-owner of the lorry is dismissed on 05.07.2016 for default.

9. Learned counsel for the appellant-petitioner would submit that the petitioner is the owner of the ambassador car bearing No.AHO 2704; while driving the said car, he met with an accident due to rash and negligent driving of the driver of the lorry bearing No.AAP 4039 and suffered injuries; the Tribunal erred in holding that the accident occurred due to rash and negligent driving of the driver of the ambassador car and there was no negligence on the part of the driver of the lorry; P.Ws.2 and 3, who are the independent witnesses, have clearly and categorically deposed about the rashness and negligence on the part of the driver of the lorry and the Tribunal ought to have awarded compensation as prayed for since the injuries and loss caused to the petitioner is proved.

10. On the other hand, learned Standing Counsel appearing for respondent No.3-insurer of the lorry would contend that there is ample evidence on record to believe that the accident was occurred due to rash and negligent driving of the driver of the ambassador car, i.e., the petitioner, and the Tribunal had analysed the entire evidence on record and rightly dismissed the claim petition.

11. Learned Standing Counsel appearing for respondent No.4-insurer of the ambassador car would submit that Ex.B.1-copy of insurance policy, the risk of third parties is only covered; the petitioner has not paid the required premium to cover his risk; the Tribunal has analysed the entire material on record and dismissed the claim petition; and ultimately, prayed to dismiss the appeal.

12. In view of the contentions putforth on both sides, the following points have come up for determination:

- (1) Whether the accident occurred due to rash and negligent driving of the driver of the ambassador car bearing No.AHO 2704 by the appellant-petitioner?
- (2) Whether the appellant-petitioner is entitled for compensation of Rs.11,50,000/- as claimed?
- (3) To what relief?

13. Point No.1: The evidence of P.W.1 reveals that on 21.04.2001 at about 4-30 a.m., he along with his friends was going by ambassador car bearing No.AHO 2704, when they reached Kanchikacherla, a lorry bearing No.AAP 4039, while overtaking another lorry, came in opposite direction and dashed against the ambassador car, due to which, he suffered simple

and grievous injuries and immediately he was hospitalized. In the cross-examination, P.W.1 reiterated the same and denied that he was deposing false and also denied that the accident occurred due to his rashness and negligence. P.W.2, who is friend of P.W.1, also deposed that on 20.04.2001 at about 4-30 p.m., when he was in the car driven by P.W.1, the lorry came in opposite direction, while overtaking another lorry, dashed against the car, their car was driven at a speed of 40 to 45 kilometer per hour, he was sitting on the left side of the driver, the accident occurred due to rash and negligent driving of the driver of the lorry. In the cross-examination, P.W.2 stated that the police did not either examine him or record his statement and the police obtained his signature. He denied that he made a statement to the police under Section 161 Cr.P.C. stating that the accident occurred due to the rash and negligent driving of the driver of the ambassador car by P.W.1. P.W.2 admitted that he gave a report to the police stating that the accident occurred due to rash and negligent driving of the car by its driver. He denied that he was deposing false. The evidence of P.W.4-doctor deposed about the injuries suffered by P.W.1. Ex.A.1-certified copy of F.I.R. reveals that a report was lodged by P.Satyanarayana, who is the driver of the lorry-respondent No.1 herein, attributing the rashness and negligence on the part of P.W.1 in causing the accident. Ex.A.2-certified copy of charge sheet also reveals the same, which was filed against the petitioner herein alleging commission of offences punishable under Sections 337 and 338 I.P.C., in which P.W.2 herein is cited as L.W.4-eyewitness to the occurrence. Ex.A.27-certified copy of the judgment in C.C. No.250 of 2001 dated 13.04.2006 on the file of the Judicial Magistrate of the First Class, Nandigama, relating to Crime

No.31 of 2001 of Kanchikacherla Police Station, wherein the petitioner was prosecuted for the offences punishable under Sections 337 and 338 I.P.C. and ultimately, the learned Magistrate acquitted the petitioner herein for the said offences. As seen from the criminal case record placed before the Court, the petitioner is not convicted for the charges framed against him under Sections 337 and 338 I.P.C. Therefore, the entire criminal case record is of no use to both the parties to hold that the rashness and negligence on the part of any of the two vehicles collided.

14. Both the insurers-respondent Nos.3 and 4 have examined their employees as R.Ws.1 and 2, who are not eyewitnesses to the occurrence of the accident and their evidence is not helpful to decide this point. The insurer of the lorry has not examined the driver of the lorry. So, as seen from the material placed on record, there is an occurrence of accident on 20.04.2001 at about 4-30 a.m. and there is also evidence to believe that the petitioner received injuries and the ambassador car is light motor vehicle when compared with the lorry, which is heavy motor vehicle. There is no evidence on record to believe that the driver of the lorry made efforts to avert the accident. P.W.1-injured, who is the driver of the car, is an eyewitness to the occurrence of accident. The burden is on the petitioner to prove the rashness and negligence to claim damages in this case. P.W.2 is the eyewitness to the accident and also the friend of P.W.1-injured. It is not safe to believe the evidence of P.W.2 in toto. None of the parties have placed the scene of panchanama. So, the entire criminal case placed on record is against P.W.1, except Ex.A.27-certified copy of judgment in C.C. No.250 of 2001 dated 13.04.2006 on the file of the Judicial Magistrate of the First Class, Nandigama, relating to Crime

No.31 of 2001 of Kanchikacherla Police Station. In view of the facts and circumstances of the case, it can be concluded that the drivers of both the vehicles, i.e., the petitioner (driver of the ambassador car) and respondent No.1 (driver of the lorry), are responsible for occurrence of the accident in a ratio of 2:1 respectively. Point No.1 is answered accordingly.

15. Point No.2: The evidence of P.W.4-doctor reveals that P.W.1 was admitted in NIMS Hospital on 28.04.2001 with the injuries, (1) fracture surgical neck of humerus right side, (2) comminuted inter condylar humerus right, (3) comminuted fracture olecranon right and (4) fracture of both bones right forearm upper third right thigh with plates and screws in C2. P.W.4 deposed that P.W.1 was operated on 16.05.2001 by Plastic Surgeon and skin grafting was applied over the right arm, all the fractures were treated conservatively and the petitioner was discharged from the hospital on 26.05.2001. P.W.4 further deposed that P.W.1 also suffered injuries, i.e., destruction of knee of the right shoulder joint, right elbow joint and the radio ulnar joints and he suffered 45% permanent partial disability and he has to undergo operation for removal of fixtures, which costs around Rs.5,000/- to Rs.10,000/-. In the cross-examination, P.W.4 reiterated the same. Ex.A.6 is the discharge summary from Nagarjuna Hospital, Ex.A.7 is the OP card of NIMS Hospital, Hyderabad, Ex.A.8 is the bunch of medical bills for an amount of Rs.23,403/-, Ex.A.9 is the skin report of NIMS Hospital, Ex.A.10 is the culture and sensitive report from NIMS Hospital, Ex.A.11 is the report of Thyrocare Technologies limited, Mumbai, Ex.A.12 is the ITMR report, Exs.13 to A.16 are the reports from Medinova Diagnostic Service and Plastic Surgery Clinic, X-Rays and Scan reports, Ex.A.21 is the medical certificate issued by NIMS Hospital,

Ex.A.22 are the prescriptions, Exs.A.23 and A.24 are the medical bills issued by Nagarjuna and NIMS Hospitals for amounts of Rs.44,498/- and Rs.23,067/-, Ex.A.25 is the discharge record certified by NIMS Hospital, Ex.A.26 is the bunch of medical bills for an amount of Rs.8,292/-, Ex.A.29 is the medical bill issued by NIMS Hospital for an amount of Rs.360/- and Ex.A.30 is the X-ray film issued by NIMS Hospital. All these documents corroborate the evidence of P.W.1-injured and P.W.4-doctor and there is nothing to doubt the same. Considering the facts and circumstances of the case, a sum of Rs.1,00,000/- is granted to the petitioner towards pain and suffering caused due to the injuries sustained by him.

16. It is evident from the record, the petitioner has spent a total sum of Rs.99,620/-, covered by Exs.A.8, A.23, A.24, A.26 and A.29, towards medical expenses. Since the petitioner sustained four grievous injuries, treated in two hospitals, undergone operation and plates and screws were inserted, it can be concluded that the petitioner spent that amount towards medical expenses and the same is granted towards medical expenses.

17. As per the evidence on record, it can be safely concluded that the petitioner did not work atleast for a period of six months. As per Ex.A.17-salary certificate of the petitioner, the petitioner was drawing a salary of Rs.8,500/- per month. P.W.3, who is the co-worker of P.W.1, also deposed the same. Though the petitioner contended that he was removed from service, no document is placed before the Court to substantiate the same. Taking into consideration the facts and circumstances of the case,

an amount of Rs.51,000/- is granted towards loss of earnings for six months at the rate of Rs.8,500/- per month.

18. P.W.4-doctor, who treated the petitioner, was not examined, but the doctor who worked in the hospital was examined and deposed that the petitioner suffered 45% permanent disability. No disability certificate, issued by any Medical Board, is placed before the Court to believe the same. It is evident from the record that the movement of the petitioner is restricted and he has suffered disability. Therefore, a sum of Rs.1,00,000/- is granted towards permanent disability. The petitioner is also entitled to a sum of Rs.10,000/- towards extra nourishment and Rs.10,000/- towards transportation. In all, the petitioner is entitled for a sum of Rs.3,70,620/-.

19. Ex.B.3 is the copy of insurance policy of the ambassador car, which reveals that it is an act policy and there is no specific mention about covering the risk of the owner of the car. Admittedly, the petitioner is the owner of the ambassador car. R.W.2-Administrative Officer of respondent No.4-insurer has categorically deposed that there is no coverage of risk of the petitioner in Ex.B.3. Therefore, no liability can be tagged against respondent No.4-insurer of the ambassador car.

20. As far as the material placed before the Court, an amount of Rs.3,70,620/- is assessed towards compensation payable in favour of the petitioner while determining point No.1, holding that the accident had occurred due to contributory negligence of the petitioner and his negligence is put to 2:1. There is also no evidence of the driver and owner in terms of the violation of terms and conditions of the insurance policy of the lorry covered by Ex.B.1. Under these circumstances, the petitioner is

entitled for 1/3rd of the amount assessed against respondent Nos.1 to 3, being the driver, owner and insurer of the lorry, which comes to Rs.1,23,540/-. Accordingly, this point is answered.

21. Point No.3: In the result, this appeal is partly allowed, modifying the order under appeal dated 02.06.2006 passed by the Tribunal in O.P. No.1125 of 2002 and an amount of Rs.1,23,540/- (Rupees one lakh twenty three thousand five hundred and forty only) is awarded in favour of the appellant-petitioner against respondent Nos.1 to 3, who are the driver, owner and insurer of the lorry bearing No.AAP 4039, with interest at 7.5% per annum from the date of petition till realisation. The respondent Nos.1 to 3 are directed to deposit the said amount before the Tribunal within a period of one month from today and the appellant-petitioner is permitted to withdraw the entire amount of compensation. The claim against respondent No.4-insurer of the ambassador car, is dismissed.

22. Miscellaneous Petitions pending, if any, shall stand closed.
No order as to costs.

Date: 06.03.2017

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Dr. SHAMEEM AKTHER, J