

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.1368 OF 2006

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is filed by the appellant, who is the petitioner in M.V.O.P. No.471 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Warangal (for short, 'the Tribunal'), aggrieved by the order dated 05.04.2006, wherein the Tribunal dismissed the petition, filed under Section 166 of the Act claiming compensation of Rs.2,00,000/- for the injuries sustained by him in a motor accident occurred on 27.10.2001.

2. The case of the appellant, in brief, is that on 27.10.2001, when the appellant and one Salendra Mahesh were proceeding by motorcycle, being driven by Salendra Mahesh and the appellant as a pillion rider, from Velair village to Hanamkonda, and when they reached near Fathimanagar Over Bridge, Kazipet at about 09:30 p.m., an auto rickshaw bearing registration No.AP 36U 6466 (for short, 'the crime vehicle') driven by its driver in a rash and negligent manner came from their behind and dashed the motorcycle, due to which the appellant fell down and received injuries and, immediately, he was admitted in Mahatma Gandhi Memorial (M.G.M.) Hospital, Warangal, where he was treated and operation was also conducted. He claimed compensation of Rs.2,00,000/- from the Respondent Nos.1 to 3, who are the owner and Branch Manager and Divisional Manager of the insurer of the crime vehicle.

3. The Respondent No.1-owner of the crime vehicle remained *ex parte* before the Tribunal. The Respondent No.2-Branch Manager of the insurer situated at Hyderabad also remained *ex parte* before the Tribunal.

4. Respondent No.3-Divisional Manager of the insurer of the crime vehicle filed counter denying the averments made in the petition and contended that there was a delay of 43 days in filing the complaint before police; that though there was no accident, in collusion with respondent No.1-owner, a story of accident is created; that the crime vehicle was not insured with its company; and that finally, prays to dismiss the claim petition.

5. The Tribunal, after considering the evidence of P.Ws.1 to 3 and the documents Exs.A.1 to A.10, though determined compensation as Rs.30,000/-, dismissed the petition on the ground that the appellant failed to prove that the accident was due to rash and negligent driving of the driver of the crime vehicle.

6. Heard the arguments of learned counsel for the appellant-petitioner and the learned Standing Counsel for Respondent Nos.2 and 3, apart from perusing the material available on record.

7. The appeal against Respondent No.1-owner of the crime vehicle was dismissed for default *vide* order of this Court on 28.06.2016.

8. Learned counsel for the appellant submits that the appellant suffered grievous injuries in the road accident, which occurred due to the rash and negligent driving of the crime vehicle. The Tribunal though assessed the compensation as Rs.30,000/- but did not award the same, on the ground that the involvement of the crime vehicle was not proved by the appellant. There is evidence of P.Ws.1 and 3, who have clearly deposed about the involvement of the crime vehicle in the road accident resulting injuries to the appellant. Ex.A-1 is the attested copy of F.I.R; Ex.A-2 is the attested copy of charge sheet, reveal the same. There is nothing to disbelieve the same. Thus, the Tribunal erred in not granting

compensation against the Respondents 1 to 3 and, hence, sought to award compensation as prayed for.

9. *Per contra*, learned standing counsel appearing on behalf of the respondents-insurance company contended that the original of Ex.A-1 is brought into existence after 45 days from the date of admission of the appellant in the Hospital and no accident occurred due to the rash and negligent driving of the crime vehicle. The Tribunal had given elaborate reasons for disbelieving the case of the appellant; the Tribunal had assigned valid reasons in dismissing the claim petition. There are no merits in the petition and ultimately prayed to dismiss the Appeal.

10. So, in view of the submissions put forth by both the learned counsel, and the material available on record, the following point came up for determination:

Whether the Respondents 1 to 3 are jointly and severally liable to pay compensation to the appellant as prayed for?

11. **POINT:** Admittedly, P.W.1 is the appellant in this case; P.W.3 is stated to be the raider of the motorcycle. Both of them deposed that the driver of the crime vehicle drove the same at high speed in a rash and negligent manner and dashed the motorcycle of the appellant, as a result of which the appellant suffered injuries while traveling as pillion raider by motorcycle. Ex.A-1 is the attested copy of F.I.R.; Ex.A-2 is the copy of charge sheet filed before the IV Additional Judicial Magistrate of First Class, Warangal, reveal the involvement of the crime vehicle in the accident resulting injuries to the appellant, as mentioned in Ex.A-3, attested copy of wound certificate. As per the evidence and material available on record, the accident alleged to have been occurred on 27.10.2001 and a report is lodged with the Police on 09.12.2001. For the

delay involved in lodging the report, appellant - P.W.1 had stated that he was hospitalized and bedridden and therefore he could not lodge a report immediately after the accident. Under Ex.A-3 wound certificate of P.W.1, there is no mention that the appellant suffered injuries in a road accident. Under Ex.A-3, there is a mention of dates of admission and discharge of the appellant as 27.10.2001 and 28.10.2001 respectively. To prove the injuries, the appellant got examined P.W.2 – doctor, who stated that the appellant suffered one grievous injury and other simple injuries and he was found in an intoxicated condition on the date of accident. A police report in this case was lodged with a delay of 45 days simply stating that the appellant was bedridden and nobody was there to lodge the complaint. As per the evidence of P.W.3, owner and raider of the motorcycle, he deposed about the rash and negligent driving of the driver of the crime vehicle. P.W.3 is no other than the relative of the appellant. He did not assign valid reasons for not lodging a report with the police in this case. The appellant suffering injuries in the accident and the occurrence of the accident due to the rash and negligent driving of the crime vehicle, are undoubtedly within the knowledge of P.W.3. If the above version of the appellant is true, nothing prevented P.W.3, raider of the motorcycle, to lodge a report with the police. Neither P.W.1 nor P.W.3 gave valid reasons for the delay of 45 days, said to have been occurred in lodging the report with the police. While dealing with the issue to tag the liability on the respondents, the Tribunal had gone through the decision rendered by the Madhya Pradesh High Court, relied on by the appellant-petitioner, in ***Manoj Vs. Samunder Singh and others***¹ wherein it was held that the delay of one year in lodging the complaint was not considered fatal. However, the Tribunal distinguishing the differences between the case therein with the instant case, where the appellant-petitioner failed to prove

¹ 2005 ACJ 520

the rashness and negligence on the part of the driver of crime vehicle, concluded that driver of the crime vehicle was not responsible for the occurrence of the accident. It is also evident from the record that immediately after occurrence of the accident, the appellant was admitted in M.G.M. Hospital, Warangal. Had P.W.1 stated therein about the involvement of the crime vehicle in the accident, the hospital authorities would have intimated the Police with regard to the occurrence of the accident and the doctor concerned could have recorded the same in hospital records. Had the occurrence of the accident is true, either P.W.1, P.W.3 or any of the relative of P.W.1 would have definitely reported the occurrence of the accident caused by the crime vehicle either to the Medical Officer in the Hospital or to the police concerned. Failing to do so by the appellant, an adverse inference has to be drawn against the appellant.

12. In view of the foregoing discussion, there is no legally acceptable evidence to believe that the appellant suffered injuries due to the rash and negligent driving of the driver of crime vehicle. The finding of the Tribunal is also based on the evidence on record. Under these circumstances, no other opinion can be substituted.

13. While dealing with the compensation payable to the appellant, the Tribunal assessed the compensation payable at Rs.30,000/-. No infirmity is found therein also.

14. In view of the facts and circumstances, no case is made out to interfere with the order under Appeal. Hence, the Appeal is devoid of merits and is liable to be dismissed.

15. In the result, the Appeal is dismissed.

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

Dr. SHAMEEM AKTHER, J

Date: 10.03.2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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M.A.C.M.A. No. 1368 OF 2006

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