

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 365 of 2006

AND

M.A.C.M.A. No. 367 of 2006

COMMON JUDGMENT:

As a motor vehicle accident that occurred on 20.10.2002 near Cherlopalle village on Srikalahasti-Tirupati road, is common in both these matters, they are being disposed of by this common judgment.

MACMA No. 365 of 2006

Aggrieved by the Order and Decree dated 14.12.2005 passed in M.V.O.P.No.367 of 2003 by the Motor Accident Claims Tribunal-cum-III Additional District Judge, Tirupati, dismissing the claim, this appeal has been preferred by the claimant to set aside the above Order and Decree and for awarding compensation on account of injuries sustained by him in the motor vehicle accident.

2. Brief facts of the case as per the averments in the claim petition are that on 20.10.2002, while the appellant-claimant was going on Hero Honda motorcycle bearing registration No.AP-03J-8420, as a pillion rider, the rider of the motorcycle lost control over the motorcycle and dashed against a pedestrian by name G. Krishnaiah near Cherlopalle village on Srikalahasti-Tirupati road. The claimant and the rider of the motorcycle have fallen down from the motorcycle and received grievous injuries, and were admitted in Area Hospital, Srikalahasti for treatment. The claimant received a fracture to his left leg and left hand shoulder, on his head, right foot, right hand, mouth and upper teeth. A case in Crime No.114 of 2002 was registered by the police against the rider of

the motorcycle. The crime was taken on file as C.C.No.57 of 2003 on the file of the Court of Additional Judicial Magistrate of First Class, Srikalahasti. Before the Tribunal, the 1st respondent had remained ex parte. The 2nd respondent has filed counter denying its liability by putting the claimant to strict proof of his age, occupation and income, and alleging that the accident occurred due to the sole negligence of the deceased Krishnaiah. It is further averred that the claim of the claimant is highly excessive and therefore sought for dismissal of the petition.

3. The point for consideration in this matter is whether the order passed by the Tribunal is illegal, and whether the appellant is entitled for any compensation?

4. Heard the arguments of Sri S.V.Muni Reddy, learned counsel for appellant-claimant; and Sri G. Vishweshwar Reddy, learned Standing Counsel for 2nd respondent-insurer.

5. Learned counsel for the appellant argued that the appellant was pillion rider of Hero Honda motorcycle bearing Nof.AP-3J-8420, while one M.Venkateswarlu was the rider of the motorcycle at the time of accident. He had driven the vehicle in a rash and negligent manner at a high speed and dashed a pedestrian, as a result of which the appellant fell down and sustained grievous injuries. The Police, after thorough investigation, have filed charge sheet against M. Venkateswarlu, as he had driven the offending vehicle, the Hero Honda motorcycle. The Tribunal, without considering all the facts had dismissed the original petition and it is liable to be set aside. It is contended that the accident has occurred due to the fault of the rider of Hero Honda motorcycle bearing No.AP-3J-8420.

6. Learned counsel for the 2nd respondent-insurer submitted that, as per the evidence available on record, there are two discrepancies noticed by the Tribunal. The discrepancy with regard to the status of the appellant is as to whether he traveled as a rider of the motorcycle or as a pillion rider. The other discrepancy is whether the vehicle involved in the accident is Hero Honda Motorcycle bearing No.AP-3J-8420 or TVS Suzuki Max 100R. It is submitted that the Tribunal has rightly considered the evidence on record and dismissed the original petition in view of the above two discrepancies.

7. The original petition was filed under Section 166(1)(a) of the Motor Vehicles Act, 1988, claiming compensation of Rs.1,00,000/ on account of the injuries sustained by the appellant in the motor vehicle accident. The accident occurred while the appellant was traveling on a Hero Honda motorcycle bearing No.AP-3J-8420 as pillion rider. The rider of the motorcycle M.Venkateswarlu had driven it in a rash and negligent manner and dashed against the pedestrian by name G.Krishnaiah. The Tribunal, on consideration of the evidence of witness PW1, and the documents Exs.A1 to A6, has come to the conclusion that the vehicle of 1st respondent which was insured with 2nd respondent is not involved in the accident. Precisely, the Tribunal held that the Hero Honda motorcycle said to be involved in the accident was not the vehicle involved in the accident, as such there is no coverage of risk for the injury sustained by the appellant in the accident and dismissed the petition.

8. Learned counsel for the appellant contends that the injured was examined as PW1 and filed documents Exs.A1 to A6, which clearly

prove that the accident occurred while the appellant was traveling on Hero Honda motorcycle. Ex.A1 is the FIR which reveals that on the complaint of one Ganugapenta Raja, the police registered a case against Phani Kuar, S/o Venkataramana, rider of TVS Suzuki Max 100R. As per the contents of the complaint, the said Phani Kumar, who is the appellant herein, has driven TVS Suzuki Max 100R vehicle at a high speed and dashed one Krishnaiah. The said Krishnaiah received injuries in the accident and on the way to hospital, succumbed to the injuries.

9. Ex.A2 is the copy of charge sheet which reveals that the appellant Phani Kumar was the pillion rider of Hero Honda motorcycle bearing No.AP-3J-8420 and the rider of the motorcycle was M. Venkateswarlu. The police filed charge sheet against M. Venkateswarlu, the rider of Hero Honda motorcycle, charging him under Sections 304-A, 337 IPC and Sections 134(a)(b) and 187 of the Motor Vehicles Act, 1988. Ex.A2 shows that the defacto complainant Ganugapenta Raja is the nephew of the deceased Krishnaiah and that he was not an eyewitness to the accident. Knowing about the incident through the villagers, he lodged Ex.A1-complaint with the police. His knowledge in lodging the complaint was based on the information given by the villagers which amounts to hearsay evidence which is inadmissible in law. The Tribunal basing on Ex.A1-complaint, has dismissed the OP without considering the contents of the charge sheet.

10. The evidentiary value of FIR is for the purpose of corroboration or contradiction. FIR is to set the criminal law into motion. Investigation proceeds basing on the FIR. The contents of the FIR is

not Gospel Truth as they have to be proved by other evidence. The inquest was conducted over the dead body of the deceased. In the inquest, it is stated that the appellant Phani Kumar was responsible for the death of the deceased, as he had driven his motorcycle at a high speed and dashed the deceased Krishnaiah. It is relevant to refer to the dates of occurrence and subsequent investigation. The accident occurred on 20.10.2002 at 2:30 PM. FIR was lodged on 20.10.2002 at 2:50 PM before the Police. Inquest was conducted on 21.10.2002. Post-mortem examination was conducted on 21.10.2002 from 2:10 PM to 4:15 PM. Cognizance of offence was taken by the Court and sent summons to accused on 22.04.2003. The charge sheet has been filed by Sub-Inspector of Police after examining 22 witnesses. In fact, FIR was lodged by one Ganugapenta Raja and he was shown as LW1 in this case. LW1 came to know about the accident through villagers and he lodged the complaint-Ex.A1. Ex.P1 is the FIR registered by the police. Ex.P2 is the charge sheet filed by the police after investigation stating that Phani Kumar was a pillion rider and one Venkateswarlu was accused in the crime. To prove the facts in FIR-Ex.P1 and Ex.P2, none of the witnesses shown in the charge sheet was examined by the insurer to prove that the accident has occurred by the use of TVS Suzuki Max 100R by the appellant Phani Kumar. Except PW1, the mother of the injured, and PW2, the injured himself, there is no other witness examined. The insurer cross examined these witnesses and nothing was elicited in their cross examination to disbelieve the version in the complaint. As a matter of fact, there are two versions present before the Tribunal basing on the document filed. The Tribunal has to take the version in favour of the injured as the Motor Vehicles Act is a beneficial legislation. In fact,

the accident is not disputed. Death of deceased Krishnaiah is not in dispute. The involvement of vehicle and the person are only at dispute, which may be crucial to decide the issue. In fact, the original petition is neither a criminal case nor a civil case. The standard of proof shall not be beyond reasonable doubt. The Tribunal has considered the evidence before it by adopting the standard of proof of beyond reasonable doubt, and dismissed the OP.

11. In fact, admittedly, the accident is proved. The appellant receiving injuries is also proved. The death of the deceased Krishnaiah is also proved. It is not the case of the insurer that the appellant has falsely impleaded the accused Venkateswarlu in order to get compensation. There is neither the plea of insurer in his counter nor there is any witness examined on their behalf. The Tribunal has based its findings only placing reliance on Ex.P1-FIR ignoring the contents of the charge sheet which is culmination of investigation after examining 22 witnesses by the police. The person who lodged the FIR, basing on which the Tribunal dismissed the claim, was not examined before the Tribunal to prove the contents of the FIR-Ex.P1. the insurer has neither taken any plea nor produced any evidence on his behalf to prove that aspect.

12. On consideration of all these facts, it can be concluded that the findings of the Tribunal are erroneous and they are liable to be set aside. In the light of the testimonies of PWs.1 and 2 and Ex.P2 charge sheet, and since the prosecution witness PW2 stood for cross-examination and nothing was elicited to discredit his testimony, the testimony of PW2 is trustworthy in the light of the contents of charge

sheet. It is also pertinent to note that in the charge sheet-Ex.A2 it is stated as under:

“The complainant (LW-1), G. Raja received information about the death of his uncle Krishnaiah and sustaining injuries by Phani Kumar in the accident. LW-1 came to P.S. in hurried mood and presented his report that the injured Phani Kumar is the responsible for the offence as he is having a TVS Suzuki Max-100 Motorcycle at the village.”

13. The above paragraph in the charge sheet clearly reveals that PW1 complainant came to the police station in a hurried manner and presented his report that the injured was responsible for the accident, as the injured was having TVS Suzuki Max 100 vehicle at the village. This is the explanation given by the investigating officer in his charge sheet for the very reason of mentioning of TVS Suzuki Max 100R motorcycle in the FIR.

14. Therefore, there are no acceptable reasons for dismissal of the OP by the Tribunal. There is ample record to prove that the appellant received injuries in the accident. Therefore, the findings of the Tribunal and the Order and Decree dated 14.12.2005 passed in the MVOP No.367 of 2003 is liable to set aside.

MACMA No. 367 of 2006

15. This appeal is preferred against Order and Decree dated 14.12.2005 passed in M.V.O.P.No.219 of 2003 by the Motor Accident Claims Tribunal-cum-III Additional District Judge, Tirupati, dismissing the claim. The appellants herein are the claimants-legal representatives

of the deceased Krishnaiah, who died in the motor vehicle accident that occurred on 20.10.2002.

16. The sum and substance of the petition averments is that on 20.10.2002, while the deceased G. Krishnaiah, was going on foot on the left side of Srikalahasti-Tirupati road near Cherlopalle village, a Hero Honda Motorcycle bearing No.AP-03J-8420, driven by one Phani Kumar in a rash and negligent manner, at a high speed, dashed the deceased, as a result the deceased fell down and sustained multiple grievous injuries. The deceased succumbed to injuries while being shifted to hospital.

17. The Tribunal, vide impugned order, dismissed the claim basing on the complaint-Ex.A1 lodged by one Ganugapenta Raja, who is the nephew of the deceased Krishnaiah.

18. The discussion in MACMA No.365 of 2006, which is arising out of the same accident, holds good for this appeal as well, and since it is a case of death, the insurer cannot escape its liability on hyper technicalities. There is ample medical record to prove the death of the deceased in the accident and, therefore, the Order and Decree dated 14.12.2005 passed in M.V.O.P.No.219 of 2003 by the Motor Accident Claims Tribunal-cum-III Additional District Judge, Tirupati, is also liable to be set aside.

19. In the result, the Order and Decree dated 14.12.2005 passed in M.V.O.P.No.367 of 2003 and also the Order and Decree dated 14.12.2005 passed in M.V.O.P.No.219 of 2003 are set aside, and the matters are remitted back to the Tribunal for awarding appropriate

compensation in the light of the injuries sustained by the appellant-claimant in MACMA No.365 of 2006; and for awarding appropriate compensation to the claimants-legal representatives in MACMA No.367 of 2006 on account of the death of the deceased G. Krishnaiah in the accident. The Tribunal shall dispose of the matters preferably within three months from the date of receipt of this order. The parties are directed to appear before the Tribunal without any notice on 03rd July, 2017.

No costs. Miscellaneous petitions, if any pending, shall stand closed.

16th June, 2017

TJMR/KSM

GUDISEVA SHYAM PRASAD, J



THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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