

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 832 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 19.07.2004, in M.V.O.P. No.451 of 2003 on the file the Chairman, Motor Vehicle Accident Claims Tribunal-cum-Principal District Judge, Warangal (for short, 'the Tribunal').

2. Appellant herein is the petitioner-injured, and the 1st respondent herein is the owner, and the 2nd respondent herein is the insurer of Auto bearing No.AP36V 990. The Original Petition before the Tribunal is under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') claiming compensation of Rs.1,00,000/- on account of the injuries sustained by the appellant in a motor vehicle accident.

3. The brief facts of the petition are that, on 09.04.2003, at about 07-30 p.m., while the appellant was returning to his house on bicycle, and when he reached near Aravindo School, Jangaon, one auto came in his opposite direction being driven in a rash and negligent manner and dashed against him. As a result of which, the appellant fell down and received multiple injuries to his left hand, left leg and other parts of the body. Immediately, he was shifted to M.G.M. Hospital, Warangal, where he underwent treatment for one week. A case in crime No.74 of 2003 for the offence under Section 338 I.P.C. was registered by Jangaon P.S. Hence, he claimed compensation of Rs.1,00,000/- against both the respondents.

4. Respondent No.1, owner of the crime vehicle, remained *ex parte* before the Tribunal.

5. Respondent No.2, 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 compensation claimed by the appellant is highly exorbitant and excessive and sought for dismissal of the petition.

6. The Tribunal, after framing three issues and, on consideration of the pleadings and evidence of the witness PW.1 and the documents Exs.A-1 to A-11, dismissed the petition holding that the manner of accident alleged to have been stated by the appellant is false and appears to be concocted.

7. Aggrieved by the dismissal of the petition, the appellant preferred the instant Appeal seeking to set-aside the impugned order and for awarding the compensation.

8. Heard Mr. Bankatlal Mandhani, learned counsel for the appellant. The claim against respondent No.1, owner of the crime vehicle, was dismissed for default *vide* order of this Court on 27.04.2016. None appeared on behalf of the 2nd respondent-insurance company.

9. The points for consideration in this matter are:

1. Whether the appellant is entitled for any compensation for the injuries received by him in the accident?

2. Whether the accident occurred on 09.04.2003 or on 08.04.2003?

10. POINT Nos.1 and 2: Both the points go together. Learned counsel for the appellant mainly contended that the Tribunal has dismissed the petition only on the ground that the accident occurred on 08.04.2003 and not on 09.04.2003, basing on the date mentioned in the case sheet. Ex.A-11 is the case sheet and the summary of the treatment given by M.G.M. Hospital. The observation of the Tribunal regarding this aspect is as follows:

“A careful perusal of the case sheet shows that the petitioner is said to have received injuries when he was hit by an auto at 07.00 p.m., on 08.04.2003 at Geethanagar’.

11. No doubt, the Tribunal has observed that the accident might have occurred on 08.04.2003. The Tribunal answered both the issues against the appellant and dismissed the petition. The Tribunal was of the opinion that the appellant in collusion with the driver of the crime vehicle had impleaded the owner of the auto, 1st respondent, falsely. The reasons recorded by the Tribunal are that there was delay of three days in lodging the F.I.R. For implicating the owner of the auto in the accident, the appellant had taken three days time and that is why there is a delay of three days in lodging the F.I.R. It was also inferred that the investigation of police is incorrect. The Tribunal dismissed the petition mainly due to the discrepancy in the date of accident. As per the contentions of the appellant before the Tribunal, the accident has occurred on 09.04.2003 whereas the medical report shows that the accident

occurred on 08.04.2003 and the appellant was admitted in the hospital on 09.04.2003. The Tribunal has totally disbelieved the F.I.R. as the delay could not be explained by the investigating agency but, it is a fact that the son of the appellant has given complaint on 12.04.2003. According to him, there was injury to the left leg of his father and he has taken his father to Jangaon, where he was advised to take him to M.G.M. Hospital.

12. Appellant is the injured in a motor vehicle accident that occurred on 08.04.2003 at about 07:30 p.m. He claimed compensation of Rs.1,00,000/- on account of the injuries sustained by him in the accident. The Tribunal has dismissed the claim of the appellant on various grounds.

13. Learned counsel for the appellant submits that the Tribunal has dismissed the Petition mainly on the ground that the accident had not occurred on 09.04.2003 and that it had occurred on 08.04.2003. The Tribunal has based its findings placing reliance on the endorsement made by the medical officer in the case sheet, Ex.A-11. Basing on the endorsement in Ex.A-11, case sheet the Tribunal observed as under:

“A careful perusal of the case sheet shows that the petitioner is said to have received injuries when he was hit by an auto at 07:00 p.m. on 08.04.2003 at Geethanagar.”

14. It is obvious from the above observation of the Tribunal that the appellant received injuries when he was hit by an auto. The Tribunal has believed that the accident had occurred disbelieving the date of accident, though it was clearly mentioned in the case

sheet that the appellant is said to have received injuries when he was hit by an auto. This is a minor discrepancy in the evidence produced by the appellant. This fact cannot be relied upon and brush aside the entire evidence of the PW.1. PW.1 is the injured who is the appellant herein; his testimony that he received injuries in the said accident when an auto dashed against him is trustworthy. The Tribunal wrongly disbelieved the said testimony. Ex.A-11 - case sheet also supports the testimony of PW.1 that he met with an accident. The Tribunal has imagined that the auto has been falsely implicated in this case, as the date of accident was wrongly mentioned as 08.04.2003. There is ample evidence on record to show that PW.1 received injuries in an auto accident. There is medical evidence to show that he received injuries. In such circumstances, the planting of auto by the appellant does not appear to be probable in this case. The Tribunal has also erred in holding that due to delay in lodging the complaint in the police station, the auto is planted in this case. The factual situation has to be carefully analyzed to come to a conclusion as to the occurrence of accident. Immediately, after the accident the appellant-injured was shifted to hospital due to injuries received by him. Admittedly, the appellant is a villager; his son has lodged a complaint before police. Therefore, it is after the accident. If really, the appellant-injured intended to falsely plant an auto with the connivance of either the police or through any other agency, he should have given the exact date of accident as 08.04.2003 but not as 09.04.2003. It is an obvious mistake on the part of the complainant, the son of the deceased, which is glaringly reflecting

the ignorance and innocence of the parties. Therefore, that cannot be a ground for dismissing the petition suspecting the *bona fides* of the appellant-injured, who had admittedly received injuries in the said accident. Therefore, the findings of the Tribunal with regard to the fact that the accident is not proved cannot be accepted. The findings of the Tribunal that the appellant did not receive the injuries in the accident, as alleged by him in the petition, found to be false and cannot be accepted. Therefore, the appellant is entitled for compensation for the injuries received by him in the accident.

15. The evidence of PW.1 reveals that he is an illiterate as he has put his thumb impression on the affidavit and the deposition. PW.1 is the appellant-injured, who stated that he met with accident on 09.04.2003 but nothing is elicited in his cross-examination disputing the fact that the accident occurred on 08.04.2003 or 09.04.2003. It is evident that the appellant-injured is an illiterate and the affidavit might have been prepared by his counsel probably on the instructions given by the appellant. The medical record also might have been prepared by the medical authorities and, according to medical board, he was treated from 09.04.2003 to 16.04.2003. The case sheet – Ex.A-11 is dated 09.04.2003 and the time of admission on 09.04.2003 was 03:07 P.M. There are two injuries as per the case sheet, Ex.A-11. The endorsement on the case sheet reveals that the appellant is alleged to have sustained injuries when he was hit by an auto at 07:00 p.m. on 08.04.2003. PW.1 stated in his chief-affidavit that the accident has occurred on 09.04.2003. In fact, there was no cross-examination on this aspect with regard to the

date of accident. Therefore, it has to be treated as crucial as per the medical board. The accident had occurred on 08.04.2003 and that date only has to be taken into consideration as the date of accident. As far as the delay in lodging the complaint is concerned, the delay need not be suspected in view of the fact that the accident occurred on 08.04.2003 at 07:00 p.m. There is discrepancy in the dates mentioned in the case sheet itself and that discrepancy can be understood that when the accident occurred on 08.04.2003 at 07:00 p.m. he was admitted in the hospital on 09.04.2003. In view of the said confusion in the dates, the counsel might have mentioned the date of accident as 09.04.2003. This is not a serious discrepancy which may be taken into consideration for disbelieving the entire version of PW.1. If really, PW.1 intended to file a false claim he would have taken care to see that all the dates are correctly mentioned without any discrepancy and he would have even called the medical officer to the Court to prove the injuries sustained by him in the accident. Therefore, keeping in view the beneficial legislation, this Court is of the view that the appellant due to his illiteracy could not bring out the date of accident correctly and as such there is small discrepancy in that and there is delay also in lodging F.I.R. which need not be doubted at all. Therefore, the appellant is entitled for claim of compensation.

16. The appellant did not examine the medical officer in this case but however, he has filed some medical bills and the medical sheet to prove that he has received injuries and he had taken treatment

in the hospital. Considering the nature of injuries, the appellant is awarded compensation of Rs.20,000/- towards two grievous injuries and Rs.5,000/- towards medical expenses, transportation and attendant charges and extra nourishment.

17. In the result, the impugned order of the Tribunal is set-aside. The Appeal is partly allowed. The appellant is awarded compensation of Rs.25,000/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization. The 2nd respondent-insurance company is directed to deposit the said amount within two months from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the entire amount.

18. In consequence, miscellaneous petitions pending, if any, shall stand closed as infructuous. No order as to costs.

Date: 18.01.2017.
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