

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.1006 of 2006

JUDGMENT:

This appeal is arising out of the decree and judgment, dated 14.10.2005 passed in O.P.No.397 of 2001 by the Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge, Nizamabad.

The appellant is the petitioner, who filed O.P.No.397 of 2001 under Section 166(1)(a) of the Motor Vehicles Act, 1988, claiming compensation of Rs.2,00,000/- on account of the injuries sustained by her in a motor vehicle accident. The Tribunal dismissed the said O.P. Aggrieved by the same, the petitioner preferred this appeal.

Heard learned counsel for the appellant.

The claim against respondent No.1 was dismissed vide order of this Court dated 17.02.2017.

The 1st respondent is the owner of the jeep bearing No.AP-25-T-5270, which was involved in the accident. The Tribunal on consideration of the evidence held that the driver of the crime vehicle was responsible for the accident. Having come to the conclusion that the accident was occurred due to rash and negligent driving of the jeep driver and the petitioner has received injuries in the said accident had surprisingly dismissed the O.P. only on the ground that due to the dispute with regard to the age of the appellant. The Tribunal disbelieved the involvement of the appellant in the accident.

As a matter of fact, the father of the appellant had lodged a complaint before the police on 19.11.2000 wherein he stated that

his daughter, who was aged about 7 years, met with an accident and received injuries and sought for taking action against the driver of the jeep, who was responsible for the accident. The complaint was dated 19.11.2000 and the police issued FIR No.147 of 2000 against the driver of the crime vehicle for his involvement in the accident. After investigation, police filed charge sheet showing the age of the petitioner as seven years who was shown as L.W.2 an injured witness. The document Ex.A3 is the injury certificate which also indicates that the appellant was aged about seven years. The medical officer mentioned the age of the appellant as six years in his medical report. Ex.A5 is the medical bill issued by P.W.2-Dr.G.Kaulaiah, Consultant Orthopaedic Surgeon which shows the age of the appellant as six years. Ex.A8 is the handicapped certificate issued by the medical officer T.Narisnga Rao which shows that she was aged 12 years. The finding of the Tribunal reveals that there is discrepancy in the age of the claimant while he was considering the evidence of the witnesses and the documents. As per the evidence of P.W.2, the age of the appellant was six years. The petitioner has shown the age of the petitioner in the claim petition as 12 years and the Tribunal basing on that fact has doubted the version of the involvement of the petitioner in the accident and dismissed the O.P. The reasons mentioned by the Tribunal are based on his suspicion that because the age of the petitioner was mentioned in the claim petition as 12 years. While all the other documents clinchingly show that the claimant was aged about six years, the Tribunal ignored those documents and taken into consideration only the age mentioned in the claim petition, which is 12 years,

and doubted the very occurrence of the accident and dismissed the claim petition. The findings of the Tribunal are not sustainable and hereby set aside.

In the result, the appeal is allowed in part while setting aside the award passed by the Tribunal, and remitted the matter back to the Tribunal for disposal according to law on the following points:

- 1) To determine the compensation basing on the evidence available on record and
- 2) to dispose of O.P.No.397 of 2001 within one month from the date of receipt of the records from this Court.

There shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

Date : 24.10.2017
ssp

GUDISEVA SHYAM PRASAD, J

