

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 769 of 2010

JUDGMENT:

1. This appeal is preferred by the appellant/claimant challenging the impugned judgment, dated 12.01.2010, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, Vizianagaram (for short, 'the Tribunal'), in O.P. No.95 of 2008.
2. The appellant is the petitioner, a minor boy aged 15 years filed O.P.No.95 of 2008 claiming compensation of Rs.2,00,000/- on account of the injuries received in a motor accident occurred on 21.10.2007 while he was going in an auto. The driver of the said auto has applied sudden brakes, due to that, the auto turned turtle. The petitioner fell down and sustained injuries to his right hand fingers and bleeding injuries to his right leg.
3. The doctors conducted surgery and removed his fingers. The petitioner is unable to write with his right hand. The accident occurred due to the rash and negligent driving of the driver of the auto. The police registered a case in Crime No.102 of 2007 for the offence under Section 338 of I.P.C.
4. The petitioner claimed compensation against the driver-cum-owner of the auto bearing No.AP-31-U-3176 and the second respondent-insurer of the auto.
5. The first respondent remained *ex parte* before the Tribunal and the second respondent filed a counter denying the rash and negligent act on the part of the driver of the auto/first respondent. He had also taken a plea that the petitioner traveled in the auto as gratuitous passenger. It is further contended that the driver of the auto has violated the terms and

conditions of the insurance policy by overloading the vehicle with children. It is lastly contended that the claim of the petitioner is highly excessive and the insurance company is not liable to pay any compensation.

6. The Tribunal, on consideration of the evidence, has answered issues 1 to 3 against the petitioner and dismissed the claim petition.

7. The appellant being aggrieved by the impugned judgment, has preferred this appeal for setting aside the same passed in O.P.No.95 of 2008 and for awarding compensation of Rs.2,00,000/-.

8. The point that arises for consideration in this appeal is:

Whether there are sufficient grounds to set aside the dismissal order passed by the Tribunal in O.P.No.95 of 2008?

9. Heard the learned counsel Sri G.V.S. Meher Kumar representing Sri A.Jagannadha Rao, learned counsel for the appellant.

10. No representation on behalf of the respondents, though notices have been served to them.

11. The learned counsel for the appellant submitted that on behalf of the petitioner, PWs.1 to 5 were examined and got marked documents Exs:A-1 to A-10 and Ex.X-1 case sheet to prove that the petitioner has received injuries in the said accident due to the rash and negligent driving of the driver of the auto and that he had taken treatment in the hospital for the injuries sustained by him.

12. The respondents got examined RWs.1 and 2 and marked Exs:B-1 to B-5 on their behalf.

13. It is further submitted that, there are no valid grounds for the Tribunal to dismiss the original petition.

14. The learned counsel for the appellant/claimant submits that the Tribunal has dismissed the claim petition on the ground that the complaint was lodged 3 days after the accident, and the delay has not been explained properly by the petitioner.

15. It is submitted that as the petitioner was minor who received injuries in the said accident, he could not give complaint immediately. The minor petitioner was admitted in the hospital and his father had to give complaint and therefore, there was delay of 3 days in lodging the complaint.

16. At the outset, it is obvious that this is an accident in which a minor boy aged 15 years has received injuries while traveling in the auto. No doubt, after 3 days of the incident, the complaint was lodged with the police. The police registered a case against the driver of the auto and also filed the charge sheet against him. The criminal Court has convicted the driver of the auto for his rash and negligent act and in spite of that the Tribunal has not considered the aspect of negligence on the part of the driver and dismissed the original petition on the point that the delay has not been explained properly. As a matter of fact, the appellant was a minor by the date of the accident and he received injuries and was admitted in the hospital and his father had to give a complaint. As his father must have attending his son for the injuries sustained by him in the accident, he could not have given the complaint immediately. Keeping in view the fact that the Motor Vehicle Act is a beneficial legislation, and the injured is a minor boy, whose right hand four fingers were cut in the accident, and due to that he is cannot write in future. the Tribunal without considering all these aspects, has erroneously come to the conclusion

that due to the delay in giving complaint, thought that the complaint itself is false, and dismissed the claim petition.

17. In view of the fact that the order passed by the Tribunal is cryptic order and it does not contain any valid reasons for dismissal of the original petition, the order passed by the Tribunal is set aside and the matter is remitted back to the Tribunal for fresh disposal according to law only on the point of compensation to be awarded to the appellant.

18. In the result, the appeal is allowed and the order passed in O.P.No.95 of 2008 is set aside. The matter is remitted back to the Tribunal with the limited purpose of appreciating the evidence on record with regard to awarding of compensation. The Tribunal is directed to dispose of the matter in accordance with law within one month from the date of receipt of a copy of this judgment. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date:25.01.2017.
ccm

G. SHYAM PRASAD, J

HON'BLE SRI JUSTICE G. SHYAM PRASAD



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