

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.830 OF 2013

JUDGMENT:

The 2nd respondent—insurer among two respondents including owner of the Allwyn truck bearing No.AP 04 U 8367, aggrieved by the award passed on 09.02.2012 in M.V.O.P. No.201 of 2006 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Kadapa at Proddatur, (for short ‘the Tribunal’) maintained by the injured claimant of the accident dated 07.01.2005 under Section 166 of Motor Vehicles Act, 1988 (for short the ‘Act’) for a compensation of Rs.1,00,000/- for the injuries sustained in the motor accident, since the Tribunal awarded Rs.74,000/- with interest at 7.5% per annum from the date of petition till realisation with joint liability against respondents 1 and 2, maintained the present appeal.

2) The contentions in the grounds of appeal vis-a-vis the oral submissions of the learned standing counsel for insurer are that the driver has no valid driving licence and he is having only LMV transport, therefore he is not liable to drive medium motor goods carriage and fixing of liability on the insurer instead of holding there is violation of policy since the driver has no valid driving licence is unsustainable and the alleged accident claimed to be taken place on 07.01.2005 and the FIR was registered on 25.08.2005 with seven months delay with no explanation and thereby the award is liable to be set-aside and the insurer is to be exonerated.

3) Whereas, it is the submission of the learned counsel for the claimant that the award of the Tribunal holds good for this

Court while sitting in appeal, there is nothing to interfere, and prayed to dismiss the appeal.

4) Heard both sides and perused the material on record.

5) A perusal of the record shows that the accident was occurred on 07.01.2005 while the claimant attending the painting work on the road as per the instructions of the contractor on the Renigunta—Tirupati main road, at about 3.00 pm, the driver of the Alwyn truck bearing No.AP 04 U 8367 of 1st respondent came in the reverse direction in a rash and negligent manner with high speed without blowing horn dashed the claimant, as a result he sustained bleeding injuries and became unconscious. Immediately, he was shifted to private hospital by his co-workers and treated for 16 days as inpatient and some elders came to hospital and shifted to Government RUYA Hospital, Tirupati where he was treated as inpatient for another 12 days and got discharged on 28.02.2005. As per the claim petition averments, prior to the accident, the injured was working as a painter under a contractor with a salary of Rs.3,000/- per month.

6) The employer of the petitioner—RW.1 managed the things and doctors of S.V.R.R. G.G. Hospital found fracture over the right medium malleolus, fracture over the lower shaft of right fibula and conducted surgery by inserting steel rod to right leg and the doctors also conducted skin grafting over his leg. He told the doctors of Government RUYA hospital about the sustaining injuries in the accident, but the office did not send intimation to OPPS (Outpost Police Station) of the hospital premises. Later, he approached the OPPS of RUYA hospital and the Alipiri Police, but

they refused to register his case. On 25.08.2005, he approached Superintendent of Police of Chittoor and gave a complaint, thereby registered the crime No.173 of 2005 of Alipiri P.S for the offence under Section 337 IPC. He did not file any complaint to OPPS of Ruya Hospital or police Alipiri or sending of complaint by Registered Post to Superintendent of police therefrom much less immediately after discharge from RUYA Hospital. His version in the claim petition initially at column No.12 is that he was treated by Medical Officer, RUYA Hospital and private Hospital at Tirupathi; whereas the averments in para No.25 of the claim petition shows initially he was shifted to private hospital where he undergone treatment for 16 days and later shifted to RUYA hospital where he was undertaken treatment for another 12 days and discharged on 28.02.2005. If really, that is true, there is nothing prevented him to give police report immediately after discharge on 28.02.2005. He pleaded with two versions of initial treatment, firstly he was taken at private hospital and secondly he was taken treatment at RUYA hospital. Further, there is no explanation for the delay of more than seven months in giving the complaint. As discussed supra, there is no scrap of paper of giving report to OPPS, RUYA hospital or to Alipiri Police Station and the alleged non taking of action by them to believe the same.

7) Ex.A1 is the FIR which shows the accident occurred on 07.01.2005 and the information received by the Alipiri Police was only on 25.08.2005 at 5.00 pm on the written complaint with endorsement of Sannihitham counter at D.P.O., Chittoor. Ex.A2— is the wound certificate issued by casualty medical officer, S.V.R.R. G.G Hospital even taken the same as if RUYA hospital and

alleged to have sustained injury on 07.01.2005 at Renigunta—Tirupati main road and admitted and on 16.02.2005 at about 8.15 pm and found 1) tenderness over pelvis 2) healed abrasion over knee joint 3 X 1 cm 3) abrasion over left lower 1/3rd high 4 X 2 cm 4) healed abrasion lower 1/3rd high 6 X 6 cm, 5) healed abrasion below knee joint 3 X 1 cm 6) ulcer over right foot 10 X 10 cm and X-rays shows fracture of malunion and fracture of lower shaft of right fibula. It is not even a mention as to where he undergone treatment earlier.

8) Ex.A7—medical certificate of S.V.R.R. G.G Hospital shows he was admitted as inpatient on 16.02.2005 for the fracture over the right medium malleolus and discharged on 28.02.2005. Ex.A8—OP chit issued by S.V.R.R. G.G. Hospital shows attended on 06.04.2005 before the Government Hospital with medium mallelous injury. Even mere delay is not fatal, when there is no record showing where he initially admitted immediately on the alleged date of accident and there is no pleading to say in which private hospital he was treated and even from PW.2—Dr Challa Sanjeev what he stated is he did not treat the injured but certified the disability under Ex.A5 of 40% and no private hospital doctor, who treated him initially, if at all, was examined, suffice to say therefrom that for some of the injuries shown healed and some unhealed even from that injury certificate of S.V.R.R. G.G Hospital covered by Ex.A2, the version of petitioner in sustaining the injuries in the motor accident is difficult to believe.

9) Ex.A9—investigating reports (three in number) of Prashanthi clinic dated 10.01.2005 show only complete sugar

examination and another dated 16.01.2015 Urine and sugar examination no way reflect about the outcome of any injuries that require such examination, so also from another report of 18.01.2015 as to sugar examination even to rely thereon much less to say to the claim of alleged injury sustained on 07.01.2005. Once such is the case, the Tribunal is gravely erred in fixing liability against respondents as if the vehicle of 1st respondent insured with 2nd respondent due to alleged negligent driving of its driver involved in the accident resulting injuries sustained by the petitioner on 07.01.2005.

10) Accordingly and in the result, the appeal is allowed setting aside the award passed by the Tribunal. However, it is made clear whatever the amounts deposited by the insurer pending appeal and permitted to be withdrawn by the claimant, liberty is given to the insurer to recover the same.

11) Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.06.04.2017
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