

HON'BLE MS. JUSTICE J. UMA DEVI

M.A.C.M.A.No. 354 of 2008

JUDGMENT:

The award dated 17.12.2007 passed by the Motor Accidents Claims Tribunal-cum-I-Addl. District Court, Vizianagaram dismissing OP No. 170 of 2005 filed by the petitioner Smt. Bodasingi Vijaya as against the rider, owner and insurer of Suzuki Samurai motor cycle bearing No. AP 35 B 9374 claiming compensation of Rs.3,50,000/- for the injuries she received in the accident dated 8.10.2004, is challenged in this appeal by her.

The parties hereinafter will be referred to as 'the petitioner' and 'the respondents' as they are arrayed in OP 170 of 2005.

The factual background of the case is briefly stated as under,

That Smt. Bodasingi Vijaya w/o Satyanarayana, the claimant in OP No. 170 of 2005, asserted that on 8.10.2004 at about 9.00 A.M. while she was standing on the left side of the road margin near Pradeepnagar road junction, Vizianagaram, Suzuki Samurai motor cycle bearing No. AP 35 B 9374, driven by the 1st respondent in deviation of the traffic rules, in a rash and negligent manner, dashed her and as the result of it, she fell down and sustained injuries on her chest and on both sides of the ribs. Soon after the accident she was taken to Seven Hills Hospital, Vishakapatnam and there she was provided with treatment for fracture to left clavicle and multiple fractures to the ribs on both sides. She was provided with treatment in

Intensive Care Unit of Seven Hills Hospital from 8.10.2004 to 21.10.2004 and was shifted to special ward on 22.10.2004 and that she was discharged from the said hospital on 27.10.2004. On account of the fractures to ribs on both sides she could not breathe properly, and was not in a position to attend to her normal duties. As advised by the doctor, she took bed rest for six months. Though she was provided with treatment for more than six months, the inability to breathe properly continued. The Traffic police, Vizianagaram registered a case in Cr.No. 109 of 2004 under Section 338 IPC against the first respondent, the rider of the Suzuki Samurai motor cycle bearing No. AP 35 B 9374 who was responsible for causing accident to her. Asserting the aforementioned pleas in her claim petition, she laid the claim as against the rider, owner and insurer of the Suzuki Samurai motor cycle bearing No. AP 35 B 9374 for a sum of Rs.3.50 lakhs.

The rider and owner of the Suzuki Samurai motor cycle bearing No. AP 35 B 9374 did not choose to contest the case filed by her. It was only the third respondent-insurer of the offending motor vehicle filed the counter contending that the 1st respondent was not the driver of the offending motor cycle and that the 2nd respondent was not its owner. The third respondent also denied holding of a valid insurance policy for the offending motor cycle as on the date of accident. Apart from the aforementioned contentions, the third respondent appeared to have raised the contention that the 1st respondent was not possessing valid driving licence to drive the offending motor cycle. The negligence attributed to the first respondent was also denied by the

third respondent vis-à-vis the age and other particulars of the petitioner.

The Tribunal, based on the aforementioned pleadings of the petitioner and the third respondent, framed the following points for consideration,

- (1) Whether the accident occurred due to rash and negligent driving of Suzuki Samurai motor cycle bearing No. AP 35 B 9374 by its driver?
- (2) Whether the petitioner is entitled to any compensation and, if so, from which of the respondents? and
- (3) To what relief;

The petitioner, in order to substantiate the pleas raised by her in her claim petition, examined herself as P.W.1. She also examined Dr.P.Deva Prasad under whose care and supervision she took treatment in Seven Hills Hospital at Vishakapatnam. An Orthopaedic Surgeon in it and the doctor who issued disability certificate were examined as P.Ws. 3 and 4. Apart from examining aforementioned witnesses, she produced Exs.A1 to A6 and Ex.X1 in support of her claim made against the owner and insurer of the offending motor cycle. On behalf of the insurance company, its officer was examined as R.W.1 and Ex.B1 was marked.

The Tribunal, on appreciation of the oral and documentary evidence available in the case record, though opined that the injuries received by the petitioner were grievous in nature, came to the conclusion that receiving of such grievous injuries was not possible by mere falling to the road by placing reliance on the evidence of P.W.2.

The Tribunal, relying on the evidence of P.W.2 who appeared to have mentioned in the case sheet that he was told that she received injuries in an accident caused due to the hit by a tractor, had dismissed the claim she laid against the respondents 1 to 3 who were the rider, owner and insurer of the Suzuki Samurai motor cycle bearing No. AP 35 B 9374. Being aggrieved by the finding recorded by the Tribunal dismissing the claim laid by her as against the rider, owner and insurer of the Suzuki Samurai motor cycle bearing No. AP 35 B 9374, she preferred the present appeal.

The contentions raised by the petitioner/appellant are precisely stated as under,

It is contended by the petitioner that the Tribunal erred in observing that the Suzuki Samurai motor cycle bearing No. AP 35 B 9374 not involved in the accident. It is her contention that the Tribunal disbelieved her oral testimony which was fully supported by Exs.A1 to A3 wherein it was clearly mentioned that the rider of Suzuki Samurai motor cycle bearing No. AP 35 B 9374 was responsible for the accident. According to her, the conclusion arrived by the Tribunal that she is not entitled to get any compensation is contrary to the evidence on record. The Tribunal placing reliance on the evidence of P.W.2 who was not an eye-witness to the accident came to an erroneous conclusion. Mere endorsement, made by P.W.2 regarding which he deposed, had no basis to hold that Suzuki Samurai motor cycle bearing No. AP 35 B 9374 not involved in the accident. Though it was clearly established by her by examining herself as

P.W.1 and by producing Exs.A1 to A3, the Tribunal had recorded a wrong finding that she received injuries in a tractor accident.

The evidence given by the petitioner during the course of her examination was that on 8.10.2004 while she was proceeding on a motor cycle along with her husband from Chelluru village, the motor cycle was stopped by her husband near Pradeepnagar on the left side of the road, and he went into a nearby motor shed. While she was standing on the left side of the road and was waiting for her husband, a motor cycle came from Vishakapatnam side and dashed her and that she received fractures to ribs on both sides and to left clavicle. The Tribunal, relying on the evidence of P.W.2 who deposed that there was no possibility of receiving of multiple fracture injuries by the petitioner when she fell to the road due to the hit by a motor cycle, and because of her failure to make statement before the police soon after the accident, and also due to the delay caused in lodging of the complaint by her husband who was the Sarpanch of Chelluru village, came to the opinion that she did not receive injuries in the accident caused by Suzuki Samurai motor cycle bearing No. AP 35 B 9374 driven by the first respondent. The petitioner, during the course of her examination before the Tribunal, deposed that due to the negligent driving of the motor cycle which came from Vishakapatnam side, dashed her and she received fracture injuries and was taken to Seven Hills Hospital, Vishakapatnam for treatment. A complaint was lodged by the husband of the petitioner against the rider of Suzuki Samurai motor cycle bearing No. AP 35 B 9374 on 10.10.2004 at 7.00 P.M.

It is true that a complaint was not given either by the petitioner or by her husband immediately after the accident and there was delay of two days in lodging of a complaint with the police concerned. The petitioner was shifted to Seven Hills, Vishakapatnam immediately after the accident for the purpose of treatment to the rib fractures and fracture to left clavicle. P.W.2 was the doctor who issued her wound certificate. The accident, as noticed from the contents of Ex.A1, took place in the morning of 8.10.2004 around 9.00 AM. She was admitted in the hospital of P.W.2 on the same day at 12.00 noon and that P.W.2 who issued wound certificate noticed swelling, deformity on left clavicle with fracture, swelling with emphysema of chest on both sides associated with breathlessness with multiple fractures on both sides of chest with haemothorax.

It was contended by the petitioner that though a complaint was lodged with the police with a delay of two days, the Tribunal disbelieved her testimony where she stated that while she was standing by the left side of the road, a motor cycle came from Vishakapatnam side in a rash and negligent manner and dashed her. The Traffic police at Vizianagaram, before whom the complaint was lodged by her husband, on thorough investigation of the case, filed a charge sheet against the rider of Suzuki Samurai motor cycle bearing No. AP 35 B 9374. Her entire testimony where she narrated the manner of the accident, though was fully corroborated with the documentary evidence she produced, the Tribunal, relying on the evidence of P.W.2 who deposed that there was no possibility of

receiving of multiple fractures by falling on the road due to hit by a motor cycle, came to the opinion that she did not receive injuries in the accident caused by Suzuki Samurai motor cycle bearing No. AP 35 B 9374. The finding so recorded was against the evidence on record. When the petitioner was admitted in the hospital of P.W.2 on 8.10.2004 at 12.00 noon on the same day, there were fractures to ribs on both sides, apart from fracture to left clavicle bone. When the petitioner was admitted in the hospital in such a condition that she was not in a position to breathe properly due to multiple fractures of ribs on both sides, it would be beyond the imagination of anybody else that she would narrate the way in which the accident took place. Simply because there was delay of two days in lodging of the complaint, the entire testimony of P.W.1 where she narrated the manner in which the accident took place could not be discarded. Since the petitioner received fractures to ribs on both sides and fracture of left clavicle, she was taken to the hospital by her husband immediately after the accident to provide treatment to her for the injuries she received in the accident.

Simply because of the delay in lodging of the complaint, the entire case of the petitioner cannot be thrown out. It is the fact that the traffic police at Vizianagaram had registered a case against the rider of Suzuki Samurai motor cycle bearing No. AP 35 B 9374 and laid the charge sheet against him on thorough investigation of the case. The reasoning given by the Tribunal to disbelieve testimony of P.W.1 which is supported by Exs.A1 to A3, in my opinion, is not

correct. The Tribunal is also not correct in holding that the petitioner did not receive injuries in the accident caused by Suzuki Samurai motor cycle bearing No. AP 35 B 9374. I opine that the Tribunal has not arrived to a correct conclusion on point No.1 which appears to have been framed in respect of the negligence attributed to the rider of the Suzuki Samurai motor cycle bearing No. AP 35 B 9374. In the light of the dissenting view expressed by this Court on point No.1, the order passed by the Tribunal dismissing OP No. 170 of 2005 deserves to be annulled.

Coming to the next question which relates to the quantum of compensation is concerned, it is evident from the contents of Ex.A2, the wound certificate that when she was examined by P.W.2, there was deformity in left clavicle with fracture, swelling with emphysema of chest on both sides associated with breathlessness and multiple fractures were there on both sides of chest with haemothorax. It is evident from the material on record that the petitioner was treated in intensive care unit of Seven Hills Hospital, Vishakapatnam from 8.10.2004 to 21.10.2004, and was discharged from the said Hospital on 27.10.2004. The petitioner is not taking treatment at present as deposed by P.W.2 and the fractures are united and she can attend to house hold works. On consideration of the nature of injuries received by the petitioner and the evidence of P.W.2 who deposed that all the fractures are united and that the petitioner can attend to house hold works as usual, this Court is of the view that awarding compensation of Rs.25,000/- in all is fair, just and reasonable.

In the light of the aforementioned discussion, the appeal filed by the petitioner is allowed setting aside the award dated 17.12.2007 passed by the Motor Accidents Claims Tribunal-cum-I-Addl. District Court, Vizianagaram in OP No. 170 of 2005 and the said OP is allowed in part awarding compensation amount of Rs.25,000/- (Rupees Twenty Five Thousands only) with interest @ 7.5% per annum from the date of claim petition till the date of realization and the same shall be payable, jointly and severally, by the respondents 2 and 3 who are the owner and insurer of the offending motor cycle.

Miscellaneous applications, if any, shall stand closed. No costs.

Dt.31.7.2018
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J. UMA DEVI, J