

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.441 OF 2006

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the appellant/petitioner challenging the judgment and award, dated 27.09.2005 passed in O.P.No.681 of 2002 on the file of the Motor Accidents Claims Tribunal (I Additional District Judge) at Khammam (for short, 'the Tribunal').

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows:

On 29.08.2001 at about 10:30 AM, the petitioner was proceeding to his house from the agricultural land. When he reached R & B Bridge, the driver of Tipper bearing No.AP-5X-4515 had driven the same in a rash and negligent manner and dashed against the petitioner. The Station House Officer, Tirumalayapalem Police Station, registered a case in Crime No.117 of 2001 for the offence punishable under Section 337 I.P.C. against the first respondent. The petitioner took treatment as an inpatient in Surya Orthopaedic Hospital, Khammam, from 29.08.2001 to 04.10.2001 and spent huge amount towards medicines and treatment. The petitioner also took treatment in Government General Hospital, Khammam. By the time of accident, the petitioner was studying 7th Class. The parents of the petitioner spent huge amount towards medicines and treatment. The first

respondent is the driver of Tipper bearing No.AP-5X-4515, which belongs to the second respondent. The third respondent is the insurer of the Tipper bearing No.AP-5X-4515. Therefore, respondent Nos.1 to 3 are jointly and severally liable to pay compensation of Rs.2,00,000/- to the petitioner with interest.

4. Respondent Nos.1 and 2 remained *ex parte*. The third respondent filed counter denying all the averments made in the petition *inter alia* contending that the Tipper bearing No.AP-5X-4515 did not involve in the accident. This respondent is not liable to pay compensation to the petitioner unless the driver of the tipper was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

- (1) Whether Eerla Sreenu (Minor) was injured in a motor accident occurred on 29.08.2001 due to rash and negligent driving of Tipper bearing No.AP. 5X 4515 by its driver/R.1?
- (2) Whether Tipper Lorry No.AP 5X 4515 is owned by R-2 and was insured with R-3 on the date of accident? If so what is the quantum of compensation payable to the petitioner by the respondents jointly and severally?
- (3) To what relief?

6. During the course of enquiry, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A.1 to A.7 were marked. On behalf of the third respondent, no oral evidence was adduced and Ex.B.1 policy was marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the petitioner did not sustain injuries in the alleged accident that occurred on 29.08.2001 and dismissed the petition.

8. Feeling aggrieved by the judgment and award of the Tribunal, the claimant preferred the present appeal.

9. Learned counsel for the appellant-petitioner submitted that the Tribunal failed to consider Exs.A.1 to A.4 and dismissed the petition on assumptions and presumptions. He further submitted that the findings recorded by the Tribunal are not supported by any evidence much less legally admissible evidence; therefore, it is a fit case to allow the appeal.

10. *Per contra*, learned counsel for the second respondent strenuously submitted that the Tipper bearing No.AP-5X-4515, which belongs to the second respondent, did not involve in the accident. He further submitted that the petitioner foisted a false case in order to claim compensation from the insurance company.

11. Learned counsel for the third respondent submitted that the petitioner in collusion with the police foisted a false criminal case against the first respondent to claim compensation. He further submitted that the Tribunal rightly considered the oral and documentary evidence available on record and dismissed the petition. He also submitted that the Tribunal has assigned reasons much less cogent and valid reasons to its findings; therefore, it is not a fit case to allow the appeal.

12. Now the points that arise for consideration in this appeal are:

1. Whether the accident occurred due to the rash and negligent driving of the driver of Tipper bearing No. AP-5X-4515, which resulted in injuries to the petitioner? and
2. Whether the petitioner is entitled to compensation?

13. Point Nos.1 and 2 are intertwined with each other; hence, this Court is inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

14. PW.1 is the injured. PW.2 is an eye witness to the accident. As per the testimony of PWs.1 and 2, when they were proceeding towards village, the driver of the Tipper bearing No.AP-5X-4515 had driven the same in a rash and negligent manner and dashed against the petitioner (PW.1). As per the testimony of PW.1, he took treatment as an inpatient in Surya Orthopaedic Hospital, Khammam, from 29.08.2001 to 04.10.2001. The testimony of PW.1 reveals that he took treatment in Government General Hospital, Khammam, on 04.10.2001 and 05.10.2001. The father of the petitioner lodged a complaint to the Station House Officer, Tirumalayapalem Police Station, on 04.10.2001. Ex.A.1 is the certified copy of F.I.R. and Ex.A.2 is the certified copy of charge sheet. As seen from the testimony of PWs.1 and 2, they proceeded to Khammam via Tirumalayapalem Village. If that is so, what prevented at least PW.2 to lodge the complaint on 29.08.2001? Thus, non-registration of the case on the date of the incident casts a cloud on the testimony of PWs.1 and 2. The petitioner mainly placed reliance on Exs.A.4 and A.5 to prove that he took treatment

as an inpatient. These two documents were filed at the time of recording of evidence of PW.1. As rightly observed by the Tribunal, the possibility of creating this type of documents cannot be ruled out completely.

15. As per the testimony of PW.3, the petitioner took treatment in his hospital from 29.08.2001 to 02.11.2001. The petitioner did not produce the case sheet of Surya Orthopaedic Hospital, Khammam, to establish that he took treatment as an inpatient from 29.08.2001 to 03.10.2001. PW.3 also did not produce the case sheet. Except the self served testimony of PW.1, there is no other convincing evidence to establish that the petitioner took treatment as an inpatient in Surya Orthopaedic Hospital, Khammam, from 29.08.2001 to 03.10.2001. The material placed before this Court clinchingly establishes that no evidence much less cogent and convincing evidence was produced before the Tribunal to establish that the petitioner received injuries in a road accident that occurred on 29.08.2001. Ex.A.3 is the certified photostat copy of Medical Certificate, dated 04.10.2001, issued by the Government Doctor. The petitioner failed to explain why he visited the Government Hospital on 04.10.2001 even though he received injuries on 29.08.2001. The father of the petitioner lodged the complaint on 04.10.2001. It appears that the complaint was lodged after admitting the petitioner in Government Hospital.

16. The recitals of Ex.A.3 also negative the contention of the petitioner that he received injuries in the road accident that occurred on 29.08.2001. There is no necessity to the Government Doctor to mention wrong information in Ex.A.3. Merely because the police filed a charge sheet that itself is not a ground to come to

a conclusion that the petitioner sustained injuries in the absence of positive evidence. As rightly observed by the Tribunal, PW.2 is a planted witness. The petitioner also created Ex.A.4-medical prescriptions and Ex.A.5 medical bills. The testimony of PW.1 and PW.2 does not inspire the confidence of the Court. The Tribunal gave a specific finding that the petitioner in collusion with the police foisted a false criminal case against the first respondent in order to claim compensation from the insurance company. If the Courts encourage this type of persons, certainly it would amount to miscarriage of justice. I am fully endorsing the findings recorded by the Tribunal. The material placed before the Court falls short to establish that the accident occurred due to the rash and negligent driving of the driver of the Tipper bearing No.AP-5X-4515, which resulted in injuries to the petitioner. There are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal. The appeal lacks merits and *bona fides*.

17. In the result, the Appeal is dismissed. There shall be no order as to costs in this appeal.

18. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 11.04.2018
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