

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1253 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 17.01.2006 passed in O.P.No.1421 of 2002 on the file of the Chairman, Motor Accident Claims Tribunal (IV Additional District Judge) (F.T.C.), Nizamabad (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 06.05.2002 at about 6:30 P.M., the petitioner was proceeding to his house from Jakranpally Village on cycle on the left side of the road. When he reached the High School, Jakranpally Village, the driver of the auto bearing No.AP-25-T-5687 had driven the same in a rash and negligent manner and dashed the cycle of the petitioner. Due to accident, the petitioner sustained fracture to ribs. The petitioner also sustained grievous injury on the head and other parts of the body. The accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP-25-T-5687 against whom, the Station House Officer, Jakranpally Police Station, registered a case in Crime No.50 of 2002 for the offence punishable under Section 337 I.P.C. The petitioner spent huge amount towards medicines and treatment. Due to fractures, the petitioner sustained disability

thereby, lost his future earnings. The first respondent is the owner of the auto bearing No.AP-25-T-5687, which was insured with the second respondent vide cover note No.50898 with effect from 27.11.2001 to 26.11.2002. Therefore, respondent Nos.1 and 2 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*.

5. The Tribunal framed the following issues:

- (1) Whether the motor vehicle accident occurred due to the rash and negligent driving of the vehicle bearing No.AP-25-T-5687, by its driver resulting injuries to the petitioner?
- (2) Whether the petitioner is entitled for compensation. If so what amount and from which of the respondents?
- (3) To what relief the petitioner is entitled?

6. During the course of enquiry, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.7 were marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP-25-T-5687, which resulted in injuries to the petitioner and dismissed the petition.

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

9. Learned counsel for the appellant (petitioner) submitted that the Tribunal has not considered the oral testimony of PW.2 and Ex.A.3-certified copy of Wound Certificate in right perspective and dismissed the petition. He further submitted that the Tribunal has

not considered Exs.A.5 to A.7 and dismissed the petition on assumptions and presumptions; therefore, it is a fit case to allow the appeal.

10. 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 the auto bearing No.AP-25-T-5687, which resulted in injuries to the petitioner? and
2. Whether the petitioner sustained injuries in a road accident that occurred on 06.05.2002 and whether the Tribunal is justified in dismissing the petition?

POINT No.1:

11. As per the finding recorded by the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP-25-T-5687. The finding recorded by the Tribunal became final in view of non-filing of the appeal by the respondents. There are no grounds much less valid grounds to disturb the finding recorded by the Tribunal.

POINT No.2:

12. As per the testimony of PW.1, he sustained injuries in the road accident that occurred on 06.05.2002. To prove the injuries, the petitioner mainly relied on the testimony of PW.2 and Ex.A.3. As per the testimony of PW.2, he examined PW.1 on 14.05.2002 and found the following injuries:

- “1) Fracture, 5, 6 ribs left side of the chest.
- 2) Fracture of clavicle left.
- 3) Abrasion over the left shoulder about 2x2 Cms.”

As per the testimony of PW.2, the age of the injuries is 1 to 12 hours prior to his examination. Ex.A.3 is the certified copy of Wound Certificate. A perusal of the record reveals that immediately after the accident, the petitioner was referred to P.H.C., Armoor. For one reason or other, the petitioner did not choose to produce the wound certificate issued by P.H.C., Armoor. If the testimony of PW.2 is taken into consideration, the petitioner sustained injuries in the mid night of 13/14.05.2002. If the petitioner sustained the injuries referred by PW.2 on 13.05.2002 mid night, how he lodged the complaint on 06.05.2002 is not properly explained. Absolutely there is no material on record, where the petitioner has taken treatment from 06.05.2002 to 14.05.2002. A person, who sustains fractures to 4th, 5th and 6th ribs left side of the chest, certainly he might have taken treatment in some hospital. The petitioner has not assigned reasons much less cogent and valid reasons for not taking of the treatment from 06.05.2002 to 14.05.2002. All these aspects create any amount of doubt with regard to the nature of the injuries sustained by the petitioner. Exs.A.5 to A.7 are subsequent to 14.05.2002. Ex.A.6 bunch of prescriptions were issued by Dr.Venkateswarlu. If Ex.A.7-discharge card is taken into consideration, the petitioner has taken the treatment as an inpatient in Deepa Orthopaedic Hospital, Nizamabad, from 14.05.2002 to 17.05.2002. The petitioner did not choose to examine the concerned Doctor of Deepa Orthopaedic Hospital, Nizamabad, to establish that he took treatment as an inpatient for three days due to fractures sustained by him. As per Ex.A.7-dischard card, the petitioner sustained fracture to clavicle left. There is no mention in the testimony of

PW.2 that the petitioner sustained fracture to left clavicle. Ex.A.3 is also silent on this aspect. There is no corroboration between Exs.A.3 and A.7. The petitioner miserably failed to prove that he sustained fractures or injuries in the motor vehicle accident that occurred on 06.05.2002. If these type of certificates are accepted by the Court, the litigant public may be under an impression that they can mislead the Courts by filing false wound certificates. If these type of certificates are accepted, the litigant public may feel that they can claim any amount of compensation even without sustaining injuries. If these type of certificates are accepted by the Court, it amounts to sending a wrong signal to the society. The Tribunal meticulously scrutinised the documents filed by the petitioner and dismissed the petition. The Tribunal has assigned cogent and valid reasons while discarding Exs.A.3 and A.5 to A.7.

13. Having regard to the facts and circumstances of the case, I am of the considered view that the petitioner failed to establish that he sustained injuries in the road accident that occurred on 06.05.2002. The Tribunal considered the material available on record in right direction and dismissed the petition. I am fully endorsing the findings recorded by the Tribunal. The appeal lacks merits and *bona fides*.

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

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

T.SUNIL CHOWDARY, J

Date: 13.04.2018
Ivd