

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2759 OF 2006

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-claimant aggrieved by the dismissal order dated 11.07.2006 in O.P.No.58 of 2002 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Nizamabad (for short 'the Tribunal').

2. Heard the learned counsel for appellant-claimant, the learned Standing Counsel for the respondent-Insurance Company and perused the record. The appeal against respondent No.1 was dismissed for default on 17.03.2017.

3. Learned counsel for the appellant-claimant would contend that the appellant suffered injuries due to the rash and negligent driving of the driver of auto bearing No.AP 25T 6642. The FIR as well as charge sheet reveals the involvement of the said auto in the road accident and causing injuries to the appellant on 13.03.2001. Ex.A20-wound certificate reveals that the appellant suffered grievous injuries in a road accident, but the Tribunal having examined Ex.A4-discharge summary of the appellant erroneously held that the appellant suffered injuries due to involvement of lorry, not auto and dismissed the claim petition. It is also contended that though the accident occurred on 13.01.2001, report was lodged with the police on 17.01.2001. There is specific mention of the involvement of the auto in the road accident. There is also investigation of the police with regard to the involvement of the said auto, which is demonstrated by marking Ex.A2-charge sheet. The Tribunal had taken erroneous view and dismissed the claim

petition and ultimately, prayed to set aside the said findings given in the impugned order.

4. Learned Standing Counsel appearing for the respondent-Insurance Company would contend that the Tribunal rightly recorded that the appellant did not suffer injuries due to the rash and negligent driving of the driver of the auto bearing No.AP 25T 6642. No credibility can be given to Ex.A4-discharge card of the appellant. There are no circumstances to take a different view and ultimately prayed to dismiss the appeal.

5. In view of the above rival contentions, the points that arise for determination are as follows: -

1. Whether the appellant suffered injuries due to the rash and negligent driving of the driver of auto bearing No.AP 25T 6642?
2. Whether the appellant is entitled for compensation for the injuries suffered by him in a road accident as pleaded and contended by him?

6. POINT No.1 : There is evidence of P.W.1-appellant with regard to the injuries suffered by him in a road accident were caused by auto bearing No.AP 25T 6642. Ex.A1-FIR dated 17.01.2001 and Ex.A2-charge sheet reveal the involvement of the said auto in the accident occurred on 13.03.2001. As per the evidence of P.W.1 and the said documents, the appellant suffered grievous injuries in the accident occurred on 13.03.2001. Ex.A4-detailed discharge summary of the appellant shows that he was admitted in NIMS hospital on 14.03.2001, got operated and discharged on 20.04.2001. There is a specific mention with regard to the injuries suffered by the appellant

and the nature of the treatment provided to him. In the said document there is also a specific mention, which reads as under:

“Alleged to have been hit by a lorry while going on a bike at 8 pm on 13.03.2001 at 8 p.m. at Kamareddy, Nizamabad District and sustained bleeding injuries to his right leg and lower thigh and no history of vomiting.”

The doctor, who made such endorsement, has not been examined. Further, in the charge sheet, there is no mention with regard to the involvement of the lorry in the subject accident. The FIR was lodged by the brother of the appellant herein. In Ex.A20-copy of the wound certificate, there is a mention that the appellant suffered injuries in the road accident that occurred on 13.03.2001. The original of the said certificate was issued by the Civil Assistant Surgeon, Area Hospital, Kamareddy. The said document did not disclose the involvement of the auto bearing No.AP 25T 6642 in the road accident.

7. Nowadays in some cases, there is a practice to verify the insurance particulars of the vehicles causing the accident. If the vehicles are not having valid insurance, with the help of the police officials, the claimants are producing some other vehicles for the purpose of claiming compensation. It is brought to the notice of this Court that the driver of the auto had admitted the guilt in criminal case with regard to causing the subject accident. This kind of admissions are also prevalent now-a-days. When there is a mention in Ex.A4-discharge summary that the appellant suffered injuries in a road accident, the details with regard to the date, time and place of occurrence of accident and also the involvement of vehicle in the accident ought to have given. When the appellant filed Ex.A4-discharge record, to rebut the same, concerned person would have

been examined. There is no such evidence on record. In view of the facts and circumstances of the case, the recitals mentioned under Ex.A4 with regard to the involvement of lorry in a road accident and the appellant suffering injuries in that accident caused by the said lorry cannot be disbelieved. As per the oral evidence on record, the accident alleged to have caused by the auto on 13.03.2001. As per Ex.A1-FIR and Ex.A2-charge sheet, the said accident alleged to have occurred on 13.01.2001. There is inconsistency in oral evidence and documentary evidence with regard to the date of occurrence of subject accident. The Tribunal rightly held that the accident was caused by a lorry and no auto was involved in the accident. The findings of the Tribunal are based on evidence on record. There is nothing to take a different view. Point No.1 is answered accordingly.

9. POINT No.2:- When there is no proof that the appellant suffered injuries due to the accident caused by auto bearing No.AP 25T 6642, there is no point in assessing the compensation. Point No.2 is answered accordingly.

10. In the result, the appeal is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed.

No costs.

Dr. SHAMEEM AKTHER, J

Date: 08.08.2018
ssp