

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

MACMA.No.1040 of 2012

ORDER :

This appeal is filed by the Insurance Company questioning the judgment and decree passed in OP.No.1423 of 2002 by the I Additional District Judge-cum-Chairman, Motor Accidents Claims Tribunal, Nizamabad.

The petitioner before the lower Court is an injured, who according to the averments in the petition sustained injuries in an accident that occurred on 01.11.2000 at 8.00 p.m. He filed a case claiming compensation of Rs.5 lakhs. The first respondent remained *ex parte*. Respondent No.2-Insurance Company contested the case on various grounds. For the petitioner, PWs.1 to 3 were examined and Exs.A.1 to A.10 were marked. For the respondents, no witness was examined and Ex.B.1 was marked. After trial, the lower Court awarded compensation of Rs.1,67,000/-. Questioning the said compensation, this appeal is filed.

This Court has heard Sri A.Ramakrishna Reddy, learned counsel for the appellant-Insurance Company and Sri P.Radhive Reddy, learned counsel for the respondents.

Both the learned counsel essentially concentrated on the issue regarding the delay in lodging of FIR and on the issue whether the accident actually occurred due to the vehicle that is owned by respondent No.1 and covered by

Insurance of respondent No.2. In the lower Court this issue and the delay in lodging of FIR were considered but it was overruled by the Court below.

Sri Ramakrishna Reddy, learned counsel appearing for the appellant argued that the accident occurred on 01.11.2000 and the FIR was lodged on 30.10.2001. Learned counsel points out that initially the patient was treated in Government Hospital, Bodhan and then he was treated at Sai Tirumala Hospital, Nizamabad. As can be seen, the learned counsel relied upon the discharge summaries of the hospitals etc., and pointed out that surgeries were carried out on the petitioner and he was discharged on 31.01.2001. As per Ex.A.5, learned counsel submits that the petitioner was hospitalized on 09.01.2001 and the operation was conducted on 17.01.2001. Counsel agrees that it is possible that after an accident, the injured cannot be in a position to lodge FIR but he states that after 31.01.2001, absolutely no explanation is forthcoming about the inordinate delay in lodging the FIR. Even if the delay is reckoned from the discharge from the hospital, namely from January, 2001, learned counsel points out that there is a delay of 9 months in lodging of FIR. In addition, learned counsel also submits that whenever a motor accident injury case is reported to a private or a Government hospital, the first and foremost thing that is done is the registering of a medico legal case and summoning of the appellant and he points out that in this case the same was

not done. Learned counsel also points out that only in the FIR that is filed on 30.10.2001, the vehicle belonging to respondent No.1 is clearly mentioned. Therefore, it is his contention that the case is foisted against respondent No.2 in collusion with respondent No.1. It is his contention that the lower Court overlooked this fundamental issue and did not appreciated in its proper perspective.

Sri Radhive Reddy, learned counsel appearing for the respondents on the other hand argues that the lower Court considered the question of delay and correctly overruled the same. He drew the attention of this Court to para 14 of the judgment of the lower Court, wherein the fact that the Driver surrendered himself before the police; admitted the accident and paid a fine is noticed. Learned Judge in the opinion of the learned counsel for the respondents did not commit any error and rightly overruled the objection. Counsel also relies upon **Ravi v. Badrinarayan**¹, wherein the question of delay of lodging of FIR was also considered. Counsel also relies upon **Bodige Padma v. Makula Shanker**², which is a judgment of a learned single Judge of this Court, wherein the learned single Judge held that the standard of proof is only preponderance of probabilities and proof of reasonable doubt is not required. He therefore argued that the delay in lodging of FIR should not a ground to reject the entire claim.

¹ (2011) 4 SCC 693

² 2012 (5) ALT 559

After hearing both the learned counsels and considering the fact that the submissions are essentially concentrated on the issue of delay in lodging of FIR, this Court has taken a close look at the two judgments cited by the learned counsel for the respondents. In para 17 and 18 of **Ravis'** case (1surpa), the Hon'ble Supreme Court held as follows:

“17. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.

18. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinized more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground. The purpose of lodging the FIR in such type of cases is primarily to

intimate the police to initiate investigation of criminal offences.”

In para 18, a note of caution was sounded by the Hon’ble Supreme Court which clearly indicates that in cases of delay, the courts are required to closely examine the evidence with a closer scrutiny and in doing so, the contents of the FIR should also be scrutinized more carefully.

Similarly, in the case of **Bodige Padma** (2 supra), this Court notices the fact that the accident occurred on 01.02.1997 and FIR was lodged on 02.02.1997. The number etc., of the offending vehicle was not mentioned in the FIR. Since the person who lodged FIR is in a precarious medical condition, after registering FIR, the police conducted investigation and in the course of investigation, they came to a conclusion that the offending vehicle was involved in the accident. PW.2 in that case was an inmate of the jeep that was hit by the lorry. He deposed that the lorry was driven at a high speed and in a negligent manner.

As per this Court, these facts make a fundamental difference. The FIR was lodged on the date after the accident and in the course of investigation, the proof of the offending vehicle was not found. Therefore, his lordship condoned the delay.

In the case on hand, there is sufficient strength in the submission of the learned counsel for the appellant that the medical treatment was completed in January, 2001, but there

is absolutely no explanation for the delay till October, 2001. There is no clear or categorical explanation for the delay. In addition, respondent No.1, the owner of the vehicle also remained *ex parte*. Therefore, on a reading of all the facts and circumstances, this Court cannot but come to a conclusion that there appears to be a foisting of the case to claim the compensation. The judgment and decree of the lower Court was passed merely upon the alleged confession of a Driver and the payment of fine cannot be a ground to hold that Insurance Company or respondent No.1 are liable. The fine that was paid is only Rs.1,000/- and in the submission of the learned counsel for the appellant by paying a fine of Rs.1,000/- a case was foisted on to the insurance company and a claim of Rs.5,00,000/- is made is correct. In addition, PW.3 is the scooter driver. He deposed that the lorry bearing No.AAI-3834 was driven rashly and it ran over PW.1. No explanation is forthcoming why PW.3 did not lodge a complaint immediately after the accident.

This Court find substantial strength in the submission of the learned counsel for the appellant and therefore, the judgment and decree of the Court below are set aside and the appeal is allowed. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date: 14.11.2018
KLP

