

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA.No.1312 of 2009

JUDGMENT:

This appeal is arising out of order dated 27.02.2009, in MVOP.No.131 of 2006 on the file of the Motor Accident Claims Tribunal-cum-I Additional District Judge, Kadapa (for short 'the Tribunal').

The appellant-claimant filed the claim petition under Section-166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.10 lakhs with interest @ 16% per annum on account of the injuries sustained by him in a motor vehicle accident.

The brief facts of the case are that on 22.10.2004, while the appellant was going to Chennur on his motor cycle bearing registration No.AP-04-G-729 from Proddatur after distributing his wedding cards, at about 7.45 pm., when he reached near Engineering Kottalu on Kadapa-Mydukur road, respondent Nos.1's Tata Sumo bearing No.AP 04-E-8829 being driven by its driver in a rash and negligent manner at a high speed dashed against the motor cycle of the appellant, as a result of which, he fell down and sustained severe bleeding injuries and the motor cycle was completely damaged. Later, he was shifted to Government Hospital, Kadapa. On his complaint, the Police

registered a case in Crime No.124 of 2004 of Khajipet Police Station. The appellant suffered deep lacerated wound on left facial region near left eye, Grade-II compound fracture of both bones of left leg, proximal left zygomatic bone fracture and multiple abrasions over left side of chest. Initially, he has taken treatment in Government Hospital and later, he was shifted to Vijaya Health Centre, Chennai, on 23.10.2004, where he took treatment till 22.11.2004. Hence, the Claim Petition.

Before the Tribunal, respondent No.1 remained *ex parte* and respondent No.2 filed written statement denying its liability.

The Tribunal, on considering the evidence of P.Ws.1 and 2-the appellant and the Medical Officer who treated the appellant, respectively, and the documents-Exs.A-1 to A-13 and Exs.X-1 and X-2, has arrived at a conclusion that the appellant failed to prove the rash and negligence on the part of the driver of the Tata Sumo bearing registration No.AP.04-G-8829 in causing the accident.

Heard the arguments of Sri J.Seshagiri Rao, learned counsel for the appellant, and the learned Standing Counsel for respondent No.2-Insurance Company.

Sri J.Seshagiri Rao, learned counsel for the appellant, argued that the Tribunal has not considered the contents of the charge sheet-Ex.P-2 and the evidence of P.W-1 and came to the

conclusion that there is no rash and negligence on the part of the driver of the Tata Sumo referred to above and dismissed the said MVOP. He has further argued that though in Ex.A-1-F.I.R., it is mentioned that the vehicle which involved in the accident was unknown, during investigation, the Police found that Tata sumo bearing No.AP-04-G-8829 was involved in the accident and therefore, the Tribunal ought to have considered the said fact.

Learned Standing Counsel for respondent No.2-Insurance Company submitted that as the Investigation Officer was not examined to prove Ex.A-2-charge sheet, the Tribunal came to the conclusion the appellant failed to prove that the accident occurred due to the rash and negligence on the part of the driver of the said Tata Sumo.

On consideration of the submissions of the learned counsel for the appellant and the learned Standing Counsel for respondent No.2-Insurance Company, it is obvious that the Tribunal has made an observation that as the appellant did not choose to examine the Investigation Officer, who filed the charge sheet, it is not sufficient to prove that the Tata Sumo bearing No.AP-4-G-8829 was involved in the accident and therefore, it came to the conclusion that the driver of the Tata Sumo was not responsible for the accident. This finding of the

Tribunal does not appear to be correct in a motor vehicle accident case. No doubt, in Ex.A-1-F.I.R, it is mentioned that an unknown vehicle was involved in the accident, but subsequently during investigation, the Investigation Officer has filed charge sheet showing that a Tata Sumo bearing No.AP-04-E-8829 was involved in the accident. The Tribunal without considering the contents of Ex.A-2- charge sheet has dismissed the said MVOP. Therefore, the findings of the Tribunal do not appear to be in consonance with the sound principles of law.

Accordingly, the appeal is disposed of and the impugned order is set aside. The matter is remanded to the Tribunal for fresh consideration of the matter and to pass appropriate orders in this regard. The Tribunal is directed to dispose of the matter within a period of three months from the date of receipt of a copy of this order.

JUSTICE GUDISEVA SHYAM PRASAD

22nd June, 2018

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