

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

MACMA.No.269 of 2012

ORDER :

This appeal is filed questioning the order dated 13.02.2006 in M.A.T.OP.No.1171 of 2001 passed by the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Khammam.

The OP was filed by one Ananthula Sambaiah father and natural guardian of Ananthula Gopinath. Respondent No.2 is the owner of the auto that caused the accident and respondent No.3 is the Insurance Company. The matter was heard on merits. The Court below was pleaded to dismiss the application on the ground that the petitioner was not examined as a witness. The only witness examined on behalf of the petitioner is PW.1-father, who is not an eye witness to the accident. Therefore, the Court below after considering the documents available including the FIR and charge sheet held that the petitioner failed to prove that respondent No.1 drove the auto in a rash and negligent manner and thereby caused the accident. Court below also held that failure of the petitioner to give evidence is fatal to the case. PW.1 the father's evidence was negated on the ground that he could not have spoken about the rash and negligent driving which caused the accident. In view of the finding on the issue No.1, the O.P was dismissed. Questioning the same, the present appeal is filed.

Learned counsel for the appellant argued that the father, who was looking after the welfare of the minor is competent to give evidence and the registration of charge sheet itself is proof of the accident.

Learned counsel for the respondents on the other hand argued that while the FIR and charge sheet are evidence, they have to be supported by primary evidence or an eye witness to support their contents. The petitioner's father cannot give evidence as he is not in any way involved in the accident. In addition, learned counsel also points out that respondent No.2 (owner) is clearly added as a party to the appeal, but the appeal against respondent No.2 was dismissed for default on 08.09.2011. Therefore, learned counsel submits that when the owner of the vehicle in question is no longer a party and no steps were taken to set aside the default order, the insurance company which insured the vehicle of the owner cannot be made liable.

This Court finds sufficient strength in the submission of the learned counsel for the respondents.

Technically as the appeal against respondent No.2 was dismissed for default in 2011 itself and till date nothing has been done to set aside the same, there is no appeal against the owner of the vehicle and consequently, the appeal against the insurance company does not lie. Even on the merits of the matter, non-examination of the petitioner in the lower

Court is fatal to the case filed. The evidence does not show the necessary ingredient of a rash and negligent driving.

Therefore, for all these reasons, the appeal is dismissed.
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: 12.11.2018
KLP

