

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.450 OF 2011

JUDGMENT:

Appellant-claimant filed this appeal against the order and decree dated 17.09.2010 passed in M.V.O.P.No.204 of 2008 by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad, whereby the Tribunal dismissed the claim petition filed by the appellant under section 166 of the Motor Vehicles Act seeking compensation of Rs.7,00,000/-.

The appellant filed claim petition alleging that he used to work in Hanuman Earth Movers. On 01.03.2008 at about 4.30 p.m. while he was working on TATA Hitachi proclainer and removing earth on the back side of State Bank of Hyderabad, Gandhinagar, the driver of the proclainer drove the same in rash and negligent manner and hit the appellant from back side, due to which, the appellant fell down and the proclainer ran over his left leg, resulting in severe crush injury and fractures to his leg. Immediately, he was shifted to Gandhi hospital for treatment. Later, he was shifted to Fracture Accident Hospital at Kukatpally for better treatment where he was treated as in-patient for 20 days. Subsequently, he took treatment in an Ayurvedic Hospital at Keepal. Thereafter, again he was admitted in Gandhi Hospital where he got operated and his left leg was removed on 26.04.2008. After his treatment, appellant lodged a complaint against the driver of the proclainer in Gandhi Nagar Police Station and the same was registered as crime No.234/2008 for the offence punishable under Section 338 of Indian Penal Code. Appellant further stated that he incurred more than Rs.90,000/- towards medical expenses, he was

permanently disabled, unable to move from bed and thereby lost his earnings. Hence, he claimed compensation of Rs.7,00,000/- from the respondents jointly and severally.

The first respondent-owner of the offending vehicle filed a counter affidavit admitting occurrence of the accident on 01.03.2008, but he denied negligence on the part of the driver of the Proclainer. He further stated that the Proclainer was insured with R.2 and the policy was in existing, as such, R.2 alone was liable to pay compensation.

The second respondent-Insurance Company filed a counter affidavit denying the averments of the claim petition including manner of accident, age, income of the deceased and insurance coverage to the Proclainer.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- (1) Whether the accident occurred owing to the rash and negligent driving of vehicle Tata Hitachi Proclainer?
- (2) Whether the petitioner is entitled to compensation, if so to what amount and against whom?
- (3) To what relief?

On behalf of the appellant, PWs 1 to 3 were examined and Exs.A.1 to A.7 were got marked. On behalf of the respondents, R.W.1 was examined and Exs.B.1 and B.2 were got marked.

The Tribunal after considering the evidence on record held that there was delay of more than 90 days in lodging FIR about the accident, which create doubt as to the manner of accident alleged in the claim petition. The Tribunal also held that the appellant failed to prove that he received injuries in the accident caused by the driver of Proclainer belonging to R.1 and thereby dismissed the

claim petition. Aggrieved by the same, the present appeal came to be filed.

Learned counsel for the appellant while relying on ***Ravi vs. Badrinarayan***¹ wherein the Hon'ble Supreme Court held that delay in lodging FIR cannot be a ground to deny justice to the victim, would contend that dismissal of the claim petition by the Tribunal on the ground that there was delay in lodging the FIR is not sustainable.

Per contra, learned counsel for R.2 made his submissions to sustain the order of the Tribunal. Further, he relied on ***United India Insurance Co. Ltd., Sanga Reddy Town, Medak District vs. G.Mallaiah***² wherein this Court set aside the award passed by the Tribunal on the ground that the Tribunal failed to see that the offending vehicle therein i.e. tractor was planted as if it was involved in accident in collusion with police; evidence on record established that charge sheet was filed in collusion with driver of tractor and complainant with a view to claim compensation from Insurance Company; and accident was not occurred due to rash and negligent driving of driver of tractor.

Now, the point falls for consideration of this Court in this appeal is 'whether the appellant sustained injuries in the accident occurred on 01.03.2008 due to rash and negligent driving of Proclainer by its driver?

Ex.A.3-MLC issued by Fracture Accident Hospital, Ex.A.4-Treatment Summary, Ex.A.5-Original discharge card issued by Gandhi Hospital, Ex.A.6-Original disability certificate and Ex.A.7-Cash receipt for Rs.25,000/- would establish that the appellant

¹ (2011) 4 SCC 693

² 2010 (6) ALD 13

sustained fracture and other injuries for which he took treatment in Fracture Accident Hospital and also Gandhi Hospital and he also suffered disability. But, it is to be proved by the appellant that he sustained those injuries in the accident occurred on 01.03.2008 due to the rash and negligent driving of Proclainer by its driver. Ex.A-3 is MLC issued by Fracture Accident Hospital. It is the case of the appellant that immediately after the accident he was shifted to Gandhi Hospital by some workers and thereafter the owners shifted him to Fracture Accident Hospital. Thus, initially he was treated in Gandhi Hospital and the evidence of P.W.2-Doctor is also to the same effect. Further, it is to be seen that the discharge card produced by the appellant under Ex.A-5 would show that he was discharged from hospital on 22.05.2008. But, he has not produced any documentary evidence to support his contention that initially he was shifted to Gandhi Hospital immediately after the accident. If it is true, even the authorities of Gandhi Hospital ought to have informed Gandhi Nagar Police about admission of the appellant in the hospital, being a Medico Legal Case. Though the appellant produced Ex.A.3-MLC issued by Fracture Accident Hospital, P.W.2-Doctor worked in the said hospital, deposed that Ex.A.3 was issued at the request of the appellant. Further, as rightly held by the Tribunal, in connected criminal case Police have not done any investigation about the accident since the driver of the offending Proclainer himself surrendered before Police on 20.10.2008. Hence, there is no evidence available on record to prove that the appellant sustained injuries in the accident occurred on 01.03.2008.

The learned counsel for the appellant further contended that the Hon'ble Supreme Court in **Ravi (1 supra)** held that the Motor Vehicles Act, 1988, being a beneficial legislature, the delay in lodging FIR cannot be treated to be fatal, in genuine cases, to deny justice to the victim. But, in the case on hand, the occurrence of accident due to rash and negligent driving of Proclainer by its driver resulting in injuries to the appellant was not proved by the appellant with cogent evidence. Hence, in view of the ratio laid down by this Court in **G.Mallaiah (2 supra)** and as the appellant failed to prove that he sustained injuries in the accident occurred on 01.03.2008 due to involvement of the Proclainer, this Court is of the considered view that the Tribunal rightly dismissed the claim of the appellant. I see no grounds to interfere with the impugned order passed by the Tribunal rejecting the claim of the appellant.

Accordingly, the appeal is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

There shall be no order as to costs.

(M.GANGA RAO, J)

15th December, 2018
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