

High Court for the State of Telangana

The Hon'ble Sri Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice T.Amarnath Goud

M.A.C.M.A. No.77 of 2017

Date: 07-03-2019

Between:

Bajan Allianz General Insurance Co. Ltd.,
Rep. by its Deputy Manager (Legal)
Hyderabad

...Appellant

and

Smt. Kuncham Lavanya and 6 others

...Respondents

Counsel for the appellant:

Mr. A. Ramakrishna Reddy

Counsel for the respondent Nos.1 to 6: Mr. K. K. Kishore

The Court made the following:

Judgment: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

The Bajaj Allianz General Insurance Company Limited, the appellant, has challenged the legality of the award dated 26-10-2015 passed by the Motor Accidents Claims Tribunal – cum- I Additional Chief Judge, City Civil Court at Secunderabad, in M.V.O.P.No. 458 of 2011, whereby, for the death of Mr. K. Yadagiri, the learned Tribunal has granted a compensation of Rs.33,63,350/- along with interest @ 7.5% p.a., from the date of filing of the petition *i.e.*, from 07-09-2011 till the date of realization.

Briefly, the facts of the case are that the claimants-respondents filed the claim petition before the learned Tribunal wherein they alleged that on 20-03-2011, at around 9.30 a.m., while he was on his way to Habsiguda, on his bajaj scooter bearing No.AP 28 AG 8602, Mr. K. Yadagiri met with an accident in front of Huda Complex, Tarnaka. According to the claimants, he was hit by a “*verna car bearing registration No. AP 29AE 3753*”, which was driven in a rash and negligent manner by its driver. Due to the accident, Mr. K. Yadagiri suffered multiple injuries and expired.

In order to buttress the claim petition, the claimants examined three witnesses, and submitted twelve documents. Although the Insurance Company did not examine any witness, it did submit a single document. The court also examined Mr. R. Shiva Kumar, the Investigation Officer, as a Court witness. After appreciating the evidence, the learned Tribunal granted the compensation as aforementioned. Hence this Appeal filed by the Insurance Company.

Mr. A. Ramakrishna Reddy, the learned counsel for the appellant, has raised a single contention before this Court with regard to the liability of the Insurance Company to pay the compensation. The learned counsel has pleaded that on 20-03-2011, K. Narsing (P.W.1) had lodged the F.I.R. (Ex.A.1) before the Osmania University Police Station. According to the complainant, he was informed by the Police that his father has been hit by an “*unknown vehicle*”, and had been rushed to the Gandhi Hospital. According to him, immediately, he rushed to the Gandhi Hospital. However, his father expired. Therefore, according to the learned counsel, the registration number of the offending vehicle was unknown on the date when the F.I.R. was lodged by K. Narsing Rao (P.W.1).

In order to buttress this case that the vehicle, which caused the accident, holds the registration number AP29AE 3763, the claimants have examined Mr. U.V.K. Atriya (P.W.2). However, according to the learned counsel, Mr. U.V.K. Atriya (P.W.2) is a planted witness. For, although he claims that he had witnessed the accident on 20-03-2011, his statement was not recorded by the Police till 05-06-2011. Therefore, for more than two-and-a-half months, he had maintained a studied silence about the accident which he had allegedly witnessed. Moreover, in his cross-examination, he had clearly admitted that he was not summoned by the Tribunal as a witness. In fact, he was appearing before the Court since he had been brought by the claimants. Therefore, according to the learned Counsel, a planted witness should not have been believed by the learned Tribunal. Since the involvement of the offending vehicle is unknown, the Insurance Company cannot be held liable to pay the compensation amount. Thus, the claimants have failed to prove that the accident was caused by a “*verna car bearing registration No.AP29 AE 3763*”, which was insured with the Insurance Company. Hence, according to the learned Counsel, the impugned award deserves to be set aside by this Court *qua* the Insurance Company.

On the other hand, the learned Counsel for the claimants-respondents has raised the following counter-contentions:

Firstly, besides Mr. U.V.K. Atriya (P.W.2), Mr. T. Vasudeva Reddy had also witnessed the alleged accident. Both Mr. U.V.K. Atriya and Mr. I. Vasudeva Reddy were examined as witnesses in the criminal trial.

Secondly, according to Mr. U.V.K. Atriya (P.W.2), in fact, his statement was recorded immediately after the accident by the Police. Therefore, the learned counsel for the Insurance Company is unjustified in claiming that his statement was recorded three months after the alleged accident. Since Mr. U.V.K. Atriya (P.W.2) and Mr. I. Vasudeva Reddy were the eye witnesses, the Police had relied on their statements, and filed a chargesheet against the driver of the offending vehicle. Therefore, the claimants have succeeded in establishing the fact that the “*verna car bearing registration No.AP29 AE 3763*” was indeed the offending vehicle. Since the said offending vehicle was insured with the Insurance Company, the appellant, it is liable to pay the compensation to the claimants. In order to buttress his plea, the learned counsel has also submitted before this Court, the testimonies recorded by the criminal court.

Therefore, the issue before both before the learned Tribunal and before this Court is, whether “*the verna car bearing registration No.AP29 AE 3763*” was, indeed, the offending vehicle or not ?

Mr. U.V.K. Atriya (P.W.2) in his affidavit states that “*the deceased died due to the injuries sustained by him in the accident which occurred on 20-03-2011 at about 9.15 p.m. in front of Huda Complex, Tarnaka Hyderabad. At the material time of the accident the deceased was proceeding on his Bajaj Chetak Scooter Bearing No. AP-28AG-8602 on the left side of the road from Habsiguda side towards Tarnaka side. And when he reached Huda Complex, Tarnaka, the driver of the Car Bearing No. AP-29AE-3763 came in the same direction and dashed the rider of the scooter from his behind. Due to which, the deceased fell down from his scooter and sustained multiple fractures and grievous injuries. The scooter was damaged. Immediately, the injured was shifted to Gandhi Hospital in 108 Ambulance. The driver of the crime vehicle after accident, stopped for a while and ran away. I noted the number of the crime vehicle as well the number of the scooter of the injured. As it was late night, I left the accident spot and later I came to know that the injured succumbed to injuries on the same day and on my enquiry came to know the name of the deceased as K. Yadagiri, who was employee of BSNL. The accident occurred and the deceased Yadagiri died due to the rash and negligent driving of the driver of*

the Car Bearing No.AP-29AE-3763. There was no negligence on the part of the deceased.”

In his cross-examination, he stated that, *“The police also recorded my statement immediately at the spot”*. He further stated that *“the visual (sic.) after two months when I went to the pan shop the police was found enquiring the owner of pan shop about the details of the accident in this case. Then I gave statement. I have noted down the number of the accident car on a piece of paper. Therefore, I could state such number to the police.”*

Although this witness would have the Tribunal believe that his statement was recorded immediately after the accident, *“at the spot”*, but, Mr. R. Shiva Kumar (C.W.1), the Investigation Officer, in his cross-examination, claimed that he had recorded the statement of Mr. U.V.K. Atriya (P.W.2) and of Mr. T. Vasudeva Reddy on 05-06-2011. Therefore, Mr. R. Shiva Kumar (C.W.1) demolishes the statement of Mr. U.V.S. Atriya (P.W.2) that his statement was recorded *“immediately after the alleged accident.”*

It is, indeed, trite to state that an eyewitness, who keeps silent over an event for a long period of time, such a witness should not be believed. For, even if Mr. U.V.K. Atriya (P.W.2)

had witnessed the accident, in which he was careful to note down the number of the offending vehicle, he was duty bound to immediately inform the Police about the occurrence. But, interestingly, this witness maintained a studied silence for over two-and-a-half months. He further claims that on a piece of paper, which he had preserved for two-and-a-half months, he had noted down the number of the offending vehicle. Yet, surprisingly, he did not hand over that piece of paper to the Police. Furthermore, in his cross-examination, he clearly admits that he had not been summoned by the learned Tribunal, but has appeared at the behest of the claimants. Therefore, obviously, Mr. U.V.K. Atriya (P.W.2) is a planted witness at the behest of the claimant. Hence, the learned Tribunal was not justified in relying upon his testimony for imposing the liability to pay the compensation amount upon the Insurance Company.

The learned Counsel for the respondent has pleaded that besides Mr. U.V.K. Atriya (P.W.2), Mr. I. Vasudeva Reddy was also an eye-witness. His testimony has been recorded by the learned criminal Court. He has produced the testimony of Mr. I. Vasudeva Reddy before this Court. According to the learned counsel, Mr. I. Vasudeva Reddy had also identified the offending vehicle as the one bearing “*Registration No. AP-29AE-3763*”.

But, Mr. I. Vasudeva Reddy, in his chief-examination, states that “*I saw a Verna car coming from Habsiguda dashed to Bajaj Chetak scooter. The rider of the scooter fell on the road and sustained multiple injuries all over his body.*” Thus, even Mr. I. Vasudeva Reddy did not give the particular registration number of the offending vehicle. Instead, he merely stated that “*Verna car coming from Habsiguda dashed to Bajaj Chetak scooter.*”.

Therefore, considering the fact that the testimony of Mr. U.V.K. Atriya (PW.2) is unreliable, the claimants have clearly failed to establish that the offending vehicle was involved in the alleged accident.

Needless to say that the claimants are required to establish certain facts, *namely* an accident has occurred, involving a particular offending vehicle, and injuries or death has occurred due to such an accident, before any compensation can be granted to them. However, in the present case, although the claimants have established the fact that an accident did occur, and Mr. K. Yadagiri expired due to the accident, they have failed to establish the particular offending vehicle involved in causing the accident. Therefore, the learned counsel for the Insurance Company, is certainly justified in claiming that the liability of

payment of compensation cannot be hoisted upon the Insurance Company.

For the reasons stated above, this appeal is allowed. The impugned award dated 26-10-2015 passed by the Motor Accidents Claims Tribunal –cum- I Additional Chief Judge, City Civil Court at Secunderabad, in M.V.O.P.No. 458 of 2011, to the extent of imposition of liability on the Insurance Company, the appellant, is hereby set aside.

(Raghvendra Singh Chauhan, J)

(T.Amarnath Goud, J)

Dt: 7th March, 2019
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