

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.2119 of 2005

JUDGMENT:

This appeal is filed by the appellant against the award and decree dated 29-07-2005 made in OP.No.196 of 2002 on the file of Motor Accident Claims Tribunal-cum-IV Additional District Judge (FTC) at Karimnagar (for short "the Tribunal), wherein and whereby the Tribunal dismissed the claim petition holding that the appellant-claimant is unable to prove the involvement of auto bearing No.AP-15-V-421.

The appellant herein is the petitioner-claimant, while respondents 1, 3 and 4 are driver of the auto bearing No.AP-15-V-421, Oriental Insurance Company Limited and owner of the auto in question, respectively, who are the respondents 1, 3 and 4 , in the O.P. before the Tribunal.

For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

The petitioner filed petition under Section 166 (1) (a) of the Motor Vehicles Act (for short "the Act") against the respondents claiming compensation of Rs.1,00,000/- for the injuries sustained by him in the motor vehicle accident occurred on 10-09-2001 at 9.30 am near KIMS College, outskirts of Kothapalli village of Karimnagar District.

The facts, in brief, are that the petitioner is a resident of Kothapalli village and he has been working as Carpenter and earning Rs.3,000/- per month apart from Rs.20/- towards batta every day and he was hale and healthy at the time of accident. On 10-09-2001, at about 9.30 am, the petitioner boarded an auto bearing No.AP 15-V-421 to go to Karimnagar and when the said auto reached near KIMS college at the outskirts of Kothapalli village, respondent No.1 who is the driver of the auto drove the same in a rash and negligent manner with high speed. Due to which respondent No.1 lost control over the auto and auto turned turtle. As a result, the petitioner and two other passengers fell down on the road and sustained severe injuries on his abdomen and upper lip. Immediately, after the accident, the petitioner was taken to Sai Anirudh Nrusing Home, Karimnagar and treated as in-patient from 10-09-2001 to 15-10-2001. The petitioner again readmitted in the same hospital for the purpose of conducting another operation on 12-11-2001 and was discharged on 03-12-2001, thereby he has incurred Rs.36,700/- towards treatment charges. The petitioner also filed I.A.No.1202 of 2003 to implead the owner of Auto bearing No.AP 15-V-421 as respondent No.4 and the same was allowed and owner of the auto was brought on record. It is further stated that the accident occurred due to rash and negligent driving of respondent No.1 and respondent No.4

is the owner of vehicle and the vehicle is duly insured with respondent No.3-company.

Respondent No.2, who is arrayed as owner of the vehicle and respondent No.4 owner of the auto in question remained exparte before the Tribunal. Respondent No.1 filed counter denying the averments of the petition. He further denied that on 10-09-2001 at about 9.30 am the petitioner was travelling in an auto bearing No.AP-15-V-421 being driven by respondent No.1 and when the said auto reached near KMS college at the outskirts of Kothapalli village, turned turtle due to rash and negligent driving of respondent No.1 and sought for dismissal of the petition.

Respondent No.3-Insurance Company filed counter denying all the averments of the petition. It also denied the age, avocation and manner of accident, injuries received and the treatment taken by the petitioner in hospital from 10-09-2001 to 15-10-2001. It is submitted that the driver of the auto was not having valid driving licence at the time of accident. In the additional counter also, it is submitted that though accident alleged to have been occurred on 10-09-2001, the complaint was lodged before the police by the petitioner on 23-01-2002 with a delay of 4 months 13 days. The petitioner with the collusion of respondents has planted the auto bearing No.AP-15-V-421 as it is duly insured. Hence, respondent No.3 is not liable to pay any compensation and sought for dismissal of petition.

Basing on the above pleadings, the following issues are settled for trial:

1. Whether the accident took place due to the rash and negligent driving of the vehicle i.e. Auto Rickshaw bearing No.AP 15-U-421 by its driver?
2. Whether the petitioner is entitled for compensation, and if so, to what amount and from whom?
3. To what relief?

To substantiate the contents of the petition, the petitioner was examined as PW.1 and also examined PWs 2 and 3 and got marked Exs.A-1 to A-14. Respondent No.3-Company examined RWs 1 and 2 and got marked Exs B.1 to B-4.

Learned counsel for the appellant submits that the evidence of PW.1 i.e. the appellant/claimant as well as evidence of PW.3 and Exs A.1 and A-2 Certified copies of F.I.R. and charge sheet respectively go to show that the accident occurred at Kothapalli near KIMS collage and the Doctor, who is not an eye-witness in his cross-examination stated that the accident took place at a different place and that cannot be a ground to disbelieve the evidence of Pws 1 and 3 and documentary evidence of Exs A-1 and A-2. He submits that F.I.R was given belatedly only because the appellant/petitioner is not aware of the same and at the advise of neighbours, he lodged F.I.R. with delay and that cannot be a ground to disbelieve the evidence of other witnesses especially documentary evidence. In support of his contentions, he relied on the judgment of **Ravi v.**

Bardinarayan¹, wherein the Supreme Court held that delay in lodging the FIR cannot be a ground to reject the claim petition.

On the other hand, learned Standing appearing for the 3rd respondent submits that though petitioner was discharged from the hospital on 15-10-2001, he lodged Ex.A.1 F.I.R. on 23-01-2002 after a period of about four and half months, and the delay is fatal to the case of the claimant. He also submits that the petitioner failed to prove the place of accident and the evidence of PW.3 who is stated to be an eye-witness to the accident was disbelieved by the Tribunal and that the Tribunal rightly dismissed the claim petition. In support of his contention, he relied on the judgment of **Anil v. New India Assurance Company Limited**².

In this case, the appeal against respondents 2 and 4 was dismissed for default, vide order dated 04-01-2012.

It is to be seen that in the charge-sheet it was mentioned that the accident occurred near KIMS hospital, Kothapalli village. PW.1 also stated the same and PW.3 also reiterated the same in his evidence. PW.2, who is the Doctor did not state about the place of accident in his chief examination. In his cross-examination, PW.2 stated that he was informed that accident occurred at Doctor's street, near SP Office, Karimnagar. In the investigators report Ex.B.3 dated 31-03-2005 RW.2 also stated that accident occurred at

¹ AIR 2011 Supreme Court 1226

² (2018) 2 Supreme Court Cases 482

Doctor's street, SP Office, Karimnagar. It is also stated in Ex.B.3 that there is dispute regarding involvement of auto and the statements made by PW.3 and his wife before RW.2 were also disbelieved by the Tribunal. In this case basing on Ex.A.1, investigation is conducted by the police and charge sheet is filed stating that auto bearing No.AP 15-V-421 was involved in the accident.

In the circumstances stated above, I am of the opinion that mere delay in lodging F.I.R. cannot be a ground to reject the claim petition as held by the Supreme Court in the judgment cited (1 supra). In the judgment relied on by learned Standing Counsel stated (2 supra) goes to show that there is no medical evidence in that case and no PME is conducted. There is no hospital record to indicate, from the nature of the injuries, that death had occurred due to an accident of the nature alleged. But in this case, there is evidence of PW.2, Ex.A.4 copy of medical certificate, Ex.A.7 and Ex.A.8 medical bills issued by the hospital, Ex.A.11 X-ray films, Ex.A.10 discharge cards issued by Sai Anirudh Nursing Home, Karimnagar and Ex.A.1 F.I.R to show the injuries suffered by the appellant/petitioner.

In view of the same, I hold that the accident occurred and there is involvement of the auto in the said accident. There cannot be a straight jacket formula that delay in lodging F.I.R. can be a ground for rejecting the claim petition, when the accident is proved and injuries sustained by the

petitioner are also found to be simple and grievous injuries respectively.

Having regard to the above, I am of the opinion that it is just and necessary to grant Rs.25,000/- towards grievous injuries and Rs.5,000/- towards simple injuries and an amount of Rs.15,000/- towards pain and suffering. Since respondents 2 and 4 remained exparte before the Tribunal, the appeal is dismissed against them, but that cannot be a ground for not granting compensation against other respondents.

Accordingly, the appeal is partly allowed granting an amount of Rs.45,000/- in all towards compensation along with interest @ 7.5% per annum from today till realization. As a sequel thereto, pending Miscellaneous Petitions i.e. I.A.No.2 of 2005 (MACMA MP No. 31545 of 2005), I.A.No.1 of 2016 (MACMA MP.No.3447 of 2016) and I.A.No.2 of 2016 (MACMA MP SR No.22666 of 2016) shall stand closed.

A.RAJASHEKER REDDY, J

20-02-2019
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