

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A.No.2649 of 2005

JUDGMENT:

The petitioner in O.P.No.493 of 2003 on the file of the learned Motor Accident Claims Tribunal – cum – III Additional District Judge, Karimnagar, is the appellant herein. He filed the claim petition claiming a compensation of Rs.1,00,000/- for the injuries sustained by him in a motor accident that occurred on 01.02.2003 at about 10:00 am at Salehnagar near the outskirts of Rekurthy Village when he was proceeding to his village in his auto bearing No.AP 15 V 8027. The accident took place when the van bearing No.AP 15 U 808 driven by its driver – the first respondent, came from behind in a rash and negligent manner and hit the auto of the claimant, as a result of which, the claimant sustained injuries. He was admitted in the Government Hospital, Karimnagar, where he was inpatient and discharged on 25.02.2003. Thereafter, he underwent periodical checkup for a period of two months and also physiotherapy from 18.01.2003 to 18.06.2003.

The first respondent filed written statement denying the petition averments and contended that the accident was not due to his negligence and that he was unaware of the accident.

The second respondent, who is the owner of the vehicle, remained *ex parte*.

The third respondent – Insurance Company, filed the written statement contending that the claimant has to prove every fact mentioned in the petition that the accident occurred due to rash and negligent driving of the first respondent. The first respondent got valid driving licence on the date of the accident and the vehicle also got fitness certificate to ply on the road and was insured with the third respondent. There was a delay of 50 days in lodging the complaint and after deliberations for a period of 50 days, the claimant implicated the vehicle to get the compensation. The delay is not explained in the FIR nor in the petition.

On the basis of the pleadings, the Tribunal framed the following issues:

- “1. Whether the accident occurred due to rash and negligent driving of the vehicle bearing No.AP-15-U-808 by its driver.
2. Whether the vehicle in question has got valid insurance on the date of accident.
3. Whether the petitioner is entitled for compensation, if so to what amount, and from whom.
4. To what relief.”

The claimant examined himself as P.W.1 and also examined his wife as P.W.2, the alleged eye-witness as P.W.3 and the doctor who gave treatment to him as P.W.4. Exs.A1 to A9 were marked on his behalf.

On behalf of the third respondent, R.W.1 was examined and Ex.B1 was marked.

On the basis of the oral and documentary evidence, the learned Tribunal came to the conclusion that, as there was a delay of 50 days in lodging the complaint, it creates doubt that the accident took place or not. Accordingly, the Tribunal dismissed the claim petition by its order dated 01.07.2005. Challenging the same, the present appeal is filed by the claimant.

Though notices are served on the respondents, there is no appearance for respondents 2 and 3.

Heard the learned counsel for the appellant and Sri A.Ravinder, learned counsel for the first respondent.

Learned counsel for the appellant submits that mere delay in filing the criminal complaint cannot be a ground for dismissing the claim petition. He further submits that the Court below erred in holding that there was a doubt that the accident took place or not and in rejecting to grant any compensation. He further submits that, on the same date of the accident, the injured claimant was admitted in the hospital and P.W.4 – Government Doctor, also stated that the claimant was admitted on 01.02.2003 and that P.W.4 examined the claimant, who sustained the injuries. Learned counsel relied on

the decision of the Apex Court in **Ravi v. Badrinarayan**¹ in support of his contention that, mere delay in lodging the FIR cannot be a ground for refusal to grant compensation.

A perusal of the order passed by the learned Tribunal goes to show that the Tribunal mainly concentrated on the delay in filing the FIR and as the delay was enormous, the Tribunal found it as a doubtful case. The learned Tribunal also went on observing that P.Ws.1 to 3 had not given any complaint immediately, though they were aware that complaint should have been given in the case of accidents. The fact that the injured appellant was in hospital from 01.02.2003 to 25.02.2003 was not disputed. But, even then, there was a delay in filing the FIR after the discharge. The only fact that weighs in favour of the appellant is that P.W.4, who is the Government Doctor, in his evidence fairly stated that the claimant sustained injuries and was admitted in the hospital on 01.02.2003 and was also operated on 06.02.2003. It shows that the accident had occurred on 01.02.2003 and the appellant suffered injuries as mentioned in Ex.A3 – wound certificate. Learned Tribunal should not have dismissed the claim petition on the ground of mere suspicion.

In the case on hand, in view of the evidence of P.W.4, this Court is of the opinion that compensation has to be granted to the appellant.

¹ (2011) 4 SCC 693

In the circumstances, an amount of Rs.25,000/- is hereby awarded to the appellant towards one grievous injury; an amount of Rs.5,000/- towards three injuries; and, an amount of Rs.15,000/- is awarded towards pain and suffering, apart from awarding a sum of Rs.5,000/- towards extra nourishment and an amount of Rs.10,000/- towards medical expenses incurred by the appellant.

The appeal is, accordingly, allowed to the extent indicated above by awarding a total amount of Rs.60,000/- (Rupees sixty thousand only) to the appellant payable by respondents 1 to 3 jointly and severally. The said amount shall carry interest @ 7.5% per annum from the date of the petition till the date of realization.

The miscellaneous petitions pending in this appeal, if any, shall stand closed.

A.RAJASHEKER REDDY, J

21.02.2019
vs