

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.2356 of 2005

JUDGMENT:

This appeal is preferred by the appellant/claimant in O.P.No.525 of 2003, on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge at Karimnagar, (for short, 'the Tribunal'), against the order, dated 19.01.2005, whereunder and whereby the claim petition filed by the appellant/claimant under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short, 'the Act') for injury sustained by him in the accident was dismissed.

2. Heard Sri V.Ravi Kiran Rao, learned counsel for the appellant and Sri Kota Subba Rao, learned Standing Counsel appearing for the 3rd respondent.

3. The appellant is the claimant, while the 1st respondent is the driver of the lorry and the 2nd respondent is the owner of the lorry i.e., Tipper bearing No.AP 36U 1678 that involved in the accident and the 3rd respondent is the insurer of the offending vehicle, in the O.P. before the Tribunal.

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

5. The facts, in brief, are that the petitioner is working as private electrician and cell phone mechanic and earning Rs.3,000/- per month; that on 13.05.2002 at about 4.00 P.M., when the petitioner was proceeding in an auto bearing No.AP 36U 7676, a lorry tipper bearing No.AP 36U 1678, driven by the 1st

respondent, was proceeding in front of the auto and without giving any signals, suddenly the tipper turned to right side, then the auto dashed to it and in that, the petitioner sustained injuries, i.e., fracture of his ribs, fracture to scapula and injury on the right side of the chest; that immediately after the accident, he was shifted to the District Head Quarters Hospital, Karimnagar; that thereafter, he was shifted to Mahaveer Hospital, Hyderabad, for better treatment; and that he was in the said hospital from 13.05.2002 to 20.05.2002 and spent Rs.40,000/- for his treatment; that the doctors advised him for six months bed rest; that he spent Rs.50,000/- for his bills, room charges, loading and boarding at Hyderabad; that the accident is due to suddenly taking right turn by the 1st respondent, he got valid driving licence on the date of the accident and the vehicle is insured under 3rd respondent; that the petitioner lost his earnings when he took treatment and bed rest and he suffered from permanent disability; and that hence, the respondents are jointly and severally liable to pay the compensation and claimed Rs.18,000/- under loss of earning, Rs.4,000/- under transportation, Rs.38,000/- under extra nourishment, Rs.40,000/- under pain and suffering and Rs.20,000/- under permanent disability and hence, claimed compensation of Rs.1,20,000/-.

6. The respondents 1 & 2 remained *ex parte*.

7. The 3rd respondent, insurer of the lorry, filed written statement denying the petition contents with a specific pleading that the petitioner has to prove every fact mentioned in the petition; that the accident occurred due to the rash and negligent

driving of the 1st respondent and the 1st respondent got valid and effective driving licence on the day of accident and the vehicle got fitness certificate to ply on the road and the vehicle insured under the 3rd respondent; that in the accident, the petitioner sustained injuries and he took treatment in the hospital by spending the amount as mentioned in the petition and he has to prove his earning capacity; that the compensation claimed is excessive and the accident occurred due to the rash and negligent driving of the driver of the auto; that the driver, owner and insurer of the auto are proper and necessary parties for adjudication and entitled to protection under Sections 147, 149 & 170 of the Act.

8. The Tribunal framed the following issues:

- “1. Whether the accident took place due to rash and negligent driving of the vehicle bearing No.AP-36-U-1678 by its driver?
2. Whether the vehicle in question has got valid insurance on the date of accident?
3. Whether the petitioner is entitled to compensation and if so, to what amount and from whom?
4. To what relief?”

9. During enquiry, on behalf of the claimant, the claimant himself was examined as P.W.1 and marked Exs.A-1 to A-6 and the driver of the auto was examined as P.W.2 and the doctor, who gave treatment to P.W.1 in Mahaveer Hospital, was examined as P.W.3. On behalf of respondents, no oral or documentary evidence was adduced.

10. The Tribunal, basing on the evidence of P.Ws.1 & 2, held that the petitioner failed to establish that he was travelling in an

auto and it met with accident and the petitioner also failed to prove that he sustained injuries when he was travelling in the auto and as per the FIR and charge sheet, the auto involved in the accident is different and hence, dismissed the claim petition.

11. Learned counsel for the appellant submits that there was no dispute that the auto was involved in the accident and mere discrepancy in the number of the auto cannot be a ground to dismiss the claim petition.

12. Learned counsel for the appellant relied on a decision reported in **Bodige Padma and others v. Makula Shanker and others¹**.

13. On the other hand, learned Standing Counsel for the 3rd respondent submits that even the evidence adduced through P.Ws.1 & 2 is also inconsistent and the Tribunal, after examining the evidence of P.Ws.1 & 2 and the documents marked, came to the conclusion that there was no negligence on the part of the offending vehicle and in the final charge sheet filed by the police, it is stated that the auto involved in the accident is different from what was mentioned in the claim petition.

14. In the present case, it is to be seen that the Tribunal, after going through the evidence of P.Ws.1 & 2 rendered a finding, which reads as follows:

“11. As per the evidence of both PWs1 and PW2 they are traveling in one auto as passenger and driver respectively. When PWs1 and PW2 are proceeding in the same auto there shall be consistency in their evidence. The evidence of PW1 is that when the

¹ 2012 (5) ALT 559

tipper taking right turn suddenly without giving signals the auto dashed to the tipper, but as per the evidence of PW2 when the tipper suddenly stopped the auto dashed to it.

12. PW2 who lodged the complaint admitted in the cross-examination that his auto was about 50 meters back to the tipper. When the auto was following a vehicle at a distance of 50 meters, even the front vehicle suddenly applies breaks, the auto driver is capable to stop his vehicle, because the distance in between two vehicles is 50 meters, which is sufficient to stop a vehicle. When the auto driver dashed to the tipper that indicates the auto was in speed or the driver of auto was driving it negligently. If a vehicle suddenly takes turn, without signals, then there is chance of following vehicle dash to that vehicle. But, as per the admission made by PW2 there is gap of 50 meters, so there is no chance of suddenly dashing the following vehicle.

13. PW2 driver of the auto deposed that he lodged the complaint to the police. If Ex.A1 is looked into he mentioned his auto number as AP-36-U-7076. The petitioner who filed the claim petition mentioned in his petition that he was traveling in an auto bearing No.AP-36-U-7676, both in column No.10 and in column No.26(i) of the petition. So, the vehicle is changed, because the number of the vehicle is changed from FIR to the petition. The petitioner also filed certified copy of Charge sheet, which is marked as Ex.A2, wherein the auto number is mentioned as AP-36-U-7072. So, the auto number dashed to the tipper is shown is different from FIR. Even in the printed FIR issued by the police the auto number is shown as 7676, but not 7072 as mentioned in the complaint. When the vehicle number is changed it will change the entire situation and incident.”

15. A perusal of the evidence of P.Ws.1 & 2 and Exs.A-1 & A-2, which are certified copies of FIR and charge sheet, and the averments made in the claim petition goes to show that the auto number is different in different documents and the evidence of P.Ws.1 & 2 is also not consistent and the Tribunal clearly held that there is no negligence on the part of the offending vehicle and the decision in **Bodige Padma’s case (1 supra)** relied upon by the

learned counsel for the appellant has no application to the facts of the present case.

16. In view of the above, I do not see any reason to interfere with the order of the Tribunal and the appeal is liable to be dismissed.

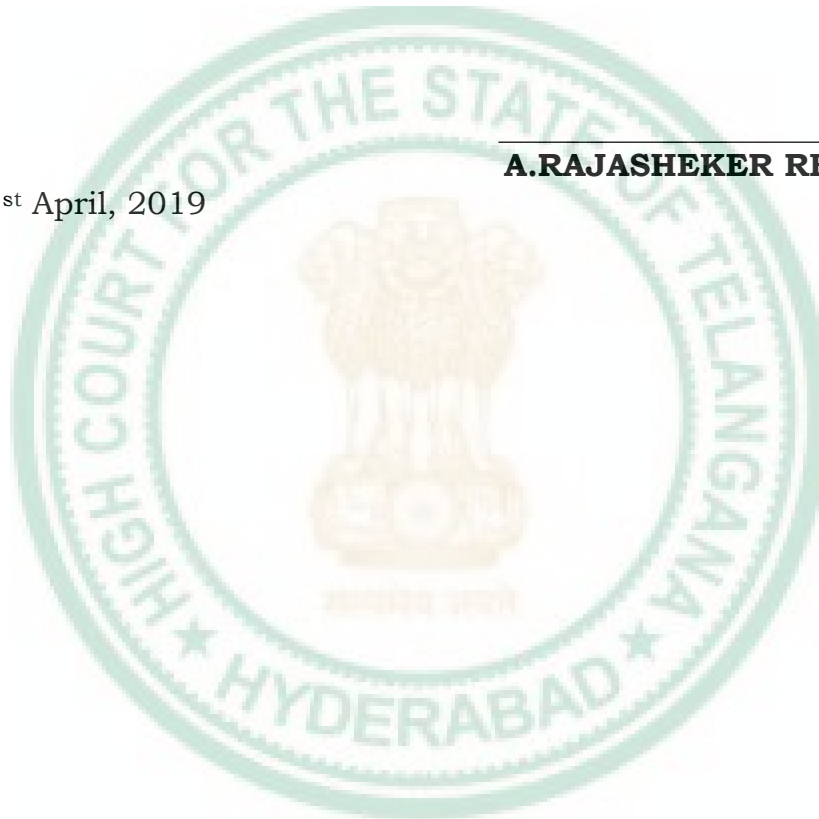
17. Accordingly, the MACMA is dismissed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A.RAJASHEKER REDDY, J

Date: 1st April, 2019

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