

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

I.A.No. 1 of 2019
IN/AND
M.A.C.M.A. No.3777 OF 2005

JUDGMENT:

I.A.No.1 of 2019 is filed to permit the petitioner/appellant to amend his claim from Section 166 to Section 163-A of the Motor Vehicles Act, 1988 (for short, the Act) and to effect consequential amendments in the claim petition.

2. MACMA.No.3777 of 2005 is filed by the appellant-claimant aggrieved by the Order and Decree dated 25.04.2005 passed in O.P.No.1044 of 2001 by the Motor Accidents Claims Tribunal-cum-VI Additional District Judge, Ranga Reddy District (FTC) at Vikarabad (for short, the Tribunal).

3. The brief facts of the case are that on 29.05.1998 at about 8.30 pm., while the appellant, along with his friend, was going on his Chetak scooter, as a pillion rider, from Hyderabad to Nancheru Village, and when the scooter reached near A.P. Police Academy at about 9.30 pm., the driver of the Chetak scooter could not notice wrongly parked lorry bearing No.ATT 2701 on the road without any parking lights and dashed the lorry from its behind. In the accident, the appellant sustained fracture and grievous injuries. He filed aforesaid OP under Section 166 of the Act against respondents Nos.1 and 2, owner and insurer of lorry and respondent No.3, insurer of Chetak scooter, claiming compensation of Rs.1,50,000/- for the injuries sustained by him.

4. Before the Tribunal, respondent Nos.1 and filed separate counters denying the averments of the claim petition and contended that as the appellant dashed the lorry from its backside in negligent manner, he is not entitled to seek compensation against them and prayed to dismiss the claim petition. Respondent No.3 also filed separate counter stating that the accident was caused due to the wrong parking of the lorry and hence, it is not liable to pay any compensation and prayed to dismiss the claim petition.

5. After considering the oral and documentary evidence on record, the Tribunal framed the following issues:

- (i) Whether the accident had occurred due to the rash and negligent driving of the driver of the lorry bearing No.ATT-2701?
- (ii) Whether the vehicle involved in the accident is insured with the second respondent?
- (iii) Whether the petitioner is entitled for any compensation? If so, to what amount and against whom?
- (iv) To what relief?

6. Insofar as issue No.1 is concerned, the Tribunal came to the conclusion that the appellant failed to prove that the accident had occurred on account of negligence on the part of the driver of the aforesaid lorry and accordingly decided the said issue against the petitioner/appellant. Insofar as issue No.2 is concerned, the Tribunal held that the lorry involved in the accident is insured with the second respondent. Insofar as issue No.3 is concerned, the Tribunal held that the appellant is not entitled to any compensation from any of the respondents. Accordingly, the

Tribunal dismissed the claim of the petitioner/appellant. Challenging the same, the present appeal is filed.

7. Sri Viswarupa Chary, learned counsel for the appellant, submits that as the lorry was stationed on the road without any lights, the driver of the scooter did not notice it due to darkness of night, and dashed the same from its behind, and hence, the finding of the Tribunal that there is no negligence on the part of the driver of the lorry in the accident is liable to be set aside. He further submits that in the accident, the appellant sustained compound fracture to his left leg and head injury, due to which, he permanently disabled and he is entitled to receive compensation, as claimed. He further submits that though P.W.2, Orthopaedic Surgeon, District Hospital, Tandur, in his evidence, deposed that he issued Ex.A.5-disability certificate, estimating the disability of the appellant at 40%, the Tribunal erroneously did not believe the same and dismissed the claim of the appellant. He further submits that though the claim petition was filed under Section 166 of the Act, in view of the facts and circumstances of the case, I.A.No.1 of 2019 was filed seeking to amend the provision of law from Section 166 to Section 163-A of the Act and prays to allow the same. In support of above submission, he relied on a Division Bench decision in **United India Insurance Co. Ltd. V. Mekkala Chandramma**¹. The sum and substance of his argument is that the mis-appreciation of the evidence on record culminated into the dismissal of the claim petition on erroneous finding of facts and that even if the appellant was at fault, the Tribunal ought to have

¹ 2002 (3) ALD 817 (DB)

found that for granting compensation under 'no fault liability', the negligence of the appellant is irrelevant.

8. Learned counsel for the respondents submit that as no evidence was adduced by the appellant to prove that the lorry was stationed on the road without lights, the Tribunal rightly dismissed the claim of the appellant. It is further submitted that the Tribunal passed a well reasoned order and there are no grounds to interfere with the same and sought to dismiss the appeal.

9. First I deal with the merits in I.A.No.1 of 2019 which was filed seeking to amend provision of law from Section 166 to Section 163-A of the Act. It is to be noted that the claim petition was filed in the year 2001 and the same was dismissed in the year 2005, but the appellant did not file any application before the Tribunal seeking to amend provision of law. It is further to be noted that in the present appeal also, which was filed in the year 2005, the appellant did not file such an application at the time of filing the appeal, but filed I.A.No.1 of 2019 in the year 2019 i.e., after lapse of 14 years of filing the appeal. The appellant did not state any reason in his affidavit for such laches on his part, except quoting the decision of the Division Bench in **Mokkala Chandramma's** case (supra). In the case cited by the learned counsel for the appellant, the learned Division Bench accepted the application filed seeking to amend their claim from Section 163-A to 166 of the Act, for the reason that the evidence led in the said application was on the premise that the application was filed under Section 166 of the Act. In the present case, appellant is seeking permission to make an

amendment of his claim from Section 166 to Section 163-A of the Act. Therefore, the said decision is not applicable to the present facts of the case. Further, I.A.No.1 of 2019 is filed at belated stage, i.e., after lapse of fourteen years of filing the Appeal and hence, I am not inclined to allow the same and is accordingly dismissed.

10. Coming to the merits of the appeal, insofar as issue No.1 is concerned, the appellant stated that due to wrong parking of the lorry on the road without any signals, the accident was caused and hence, there is negligence on the part of the driver of the lorry in causing the accident. But, the appellant in his cross-examination, stated that when the lorry was proceeding ahead of the scooter, the driver stopped the same, due to which, the driver of the scooter could not control it, as the distance was only two to three yards, and dashed the lorry. Noticing the above contradictory statements, the Tribunal came to the conclusion that the appellant could not prove that the accident had occurred due to the negligence of the driver of the lorry. Therefore, I see no reason to interfere with the said finding of the Tribunal and the contention of the learned counsel for the appellant in this regard is rejected.

11. Coming to issue No.2, as the second respondent filed a memo stating that the lorry was insured with it, the Tribunal answered the issue accordingly, which needs no interference.

12. Insofar as issue No.3 is concerned, as per the evidence, at the time of accident, P.W.3 was riding the scooter and the appellant was a pillion rider and the scooter dashed the parked lorry from its

behind. As per Ex.A.2-charge sheet, after the accident, P.W.3 absconded. It is reasonably presumed that when an accident takes place in the above manner, the rider of two wheeler must be seriously injured, but not the pillion rider. But, surprisingly, in the present case, P.W.3 did not raise any claim for his injuries and did not state in his evidence with regard to injuries sustained by him in the accident. Therefore, it becomes necessary for this Court to go into the details of the accident and the claim of the appellant in *infra paras.*

13. The appellant in his chief-examination affidavit stated that he sustained compound fracture of his left leg, head injury and other multiple injuries and immediately after the accident, he was shifted to Osmania General Hospital, where he was admitted as in-patient for a period of 38 days and that immediately after discharge from the hospital, he took follow-up treatment privately. But, in his cross-examination, he stated that after giving first aid in Kosaraju Hospital, he was referred to Osmania General Hospital. Ex.A.4-Outpatient chit and prescription issued by Osmania General Hospital, shows that the appellant sustained compound fracture of left femur, but did not disclose any fracture injury. Apart from the same, as per Ex.A.3-certified copy of certificate issued by Kosaraju Hospital discharge card, the appellant was admitted in the said hospital on 29.05.1998 and was given symptomatic treatment for simple injury and the appellant stayed for few hours and left the hospital. In the evidence, P.W.2, Orthopaedic Surgeon, District Hospital, Tandur, though admitted

that he issued Ex.A.5-disability certificate, estimating the disability of the appellant at 40%, but in his cross-examination, admitted that he did not conduct any operation or treated the appellant prior to the date of issuing Ex.A.5 and that the fracture injury is completely healed up and united. Basing on the above evidence, I am of the opinion that the appellant could not prove his disability. Hence, the contention of the learned counsel for the appellant in this regard is also rejected. However, as the appellant suffered simple injuries in the accident and incurred medical expenses under Ex.A.6-buch of medical bills, I am inclined to grant a sum of Rs.15,000/- towards injures and Rs.5,000/- towards medical expenses.

14. In the result, I.A.No.1 of 2019 is dismissed and the Motor Accident Civil Miscellaneous Appeal is partly allowed granting a sum of Rs.20,000/- to the appellant towards compensation for the injuries sustained by him in the road accident along with interest @ 7.5% per annum from the date of claim petition till realization, holding respondent Nos.1 and 2 jointly and severally liable to pay the same. The Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 01.10.2019
TJMR