

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.2222 OF 2005

JUDGMENT

This appeal is filed against the judgment and decree dated 21.02.2005 passed by the Motor Accidents Claims Tribunal (IV Additional District Judge) (FTC), Nizamabad, in O.P.No.957 of 2001, wherein and whereby, the claim petition of the claimant was dismissed.

The case of the claimant is that on 7-4-2001, while he was going on foot and that when he reached near Skindrapoor Voddera Colony on N.H.7, at about 1.00 p.m., the driver of the lorry bearing No. AP J – 1090, drove the vehicle in a rash and negligent manner and dashed against one lady by name Aheesha Begum and then the petitioner. Due to which, the said lady and the claimant sustained multiple and grievous injuries. The claimant received compound fracture to both bones of right leg, injuries on his left hand, back, head and other parts of the body. On 7.4.2001 at 4.00 p.m., he was admitted in Pragathi Nursing Home, Nizamabad, for treatment, where surgery was conducted and nails were inserted to his right leg. The claimant incurred an amount of Rs.40,000/- towards medical and incidental charges and that he require further amount for future treatment.

Cr.No.25 of 2001 under Section 338 of the IPC was registered against the driver of the crime vehicle on the file of Police Station Jakranpally.

The further case of the claimant is that he is aged 19 years, and is studying and also doing milk vending business, and earning an amount of Rs.1,500/- per month and due to the accident, he became unfit to work and is unable to do any work and also unable to concentrate on

studies. Due to the accident, he became permanently disabled and dependant on others.

With the above averments, the claimant filed claim petition under Section 166 of the Motor Vehicles Act, 1988 and the Rules made there under, claiming compensation of Rs.1,50,000/- under various heads.

The respondents 1 and 2, who are the insured and the insurer, filed written statements and denied the averments made in the claim petition and sought for dismissal of the same.

The Tribunal, considering the evidence of the claimant as P.W.1, coupled with Exs.A-1 and A-2, which are copies of FIR and charge sheet, held that the accident occurred due to rash and negligent driving of the driver of the crime vehicle.

With regard to compensation for injuries alleged to have been sustained by the claimant, the Tribunal found that there is delay in lodging the FIR and further held that the evidence lead by the claimant is contrary to his pleading and that he failed to prove that he received injuries in the said accident and further disbelieving Ex.A-3 wound certificate, the claim petition was dismissed. Aggrieved by the same, the present appeal is filed.

Learned counsel appearing for the claimant submits that the Tribunal found that the accident occurred due to rash and negligent driving of the driver of the lorry, but however disbelieved the evidence of the claimant with regard to injuries on the ground that there is discrepancy with regard to averments made in the claim statement and in the evidence of the claimant. He stated that claimant received

grievous injuries and he relied on Ex.A-3 wound certificate issued by the doctor who treated him at Pragathi Nursing Home, Nizamabad, but the Tribunal disbelieved the same, on the ground that Dr. L.Ramulu, who issued the certificate, is in the habit of issuing false medical certificates and the High Court in AAO. No.3518 of 2004 gave direction to the Commissioner, Workmen Compensation, Nizamabad and the Chairman, Motor Accident Claims Tribunal, Nizamabad, not to act solely on the evidence of Dr. T.Narsing Rao and Dr. L.Ramulu. He submits that against the remarks made by this court, Dr.L.Ramulu, approached the Hon'ble Supreme Court in Civil Appeal No.4476 of 2006 and the Supreme Court by order dated 13.10.2006, expunged the adverse remarks made by this court. Therefore, the wound certificate issued under Ex.A-3, can be relied upon. He submits that the Tribunal disbelieved Ex.A-3 on another ground that the doctor who issued Ex.A-3 was not examined. Relying on the judgment of a learned single Judge of this court in *GUNDALA MALLAMMA v. TANKA PRASAD*¹, learned counsel contended that medical certificate can be relied upon even in the absence of the evidence of the doctor. Learned counsel further submits that there is delay in lodging FIR and the Tribunal has taken the said aspect, as one of the grounds, for disbelieving the evidence adduced by the claimant. He submits that delay in lodging FIR cannot be taken into consideration, as admittedly accident is proved, and that strict rules of evidence or Civil Procedure Code, 1908 cannot be made applicable to the claims under beneficial legislation like the Motor Vehicles Act, 1988 and the based on the evidence available, compensation can be granted. With these submissions, he sought to grant compensation as claimed by the appellant in the claim petition.

¹ 2004(5) ALD 400

Sri N.J.Sunil Kumar, learned Standing Counsel appearing for the 2nd respondent - insurance company supporting the impugned order, sought to dismiss the appeal.

In this appeal, what is required to be examined is whether the claimant could prove that he sustained injuries in the accident and whether the Tribunal committed any error in dismissing the claim petition?

There is no dispute that the Tribunal recorded finding of fact that the accident occurred due to rash and negligent driving of the driver of the crime lorry. The issue is whether the claimant received injuries in the said accident. The Tribunal found that in column 11 of the claim statement, it is stated that claimant sustained fracture injuries on his right hand, right hand both bones and injuries to hands, legs, back and other parts of the body. In paragraph No.26 of the petition, he stated that he received injuries on his legs, hands, back, head and other parts of the body, whereas, in his evidence, he stated that he sustained fracture to 'right leg both bones' and left leg and forehead. On a perusal of the claim statement and the evidence, the Tribunal found that evidence of the claimant is contrary to his pleadings and he deposed as per Ex.A-3 wound certificate. Further, in the said certificate it is stated that surgery was done to right hand and two screw fixation was done. But he did not produce any case sheet issued by the nursing home to show that he took treatment and he also did not file any X-ray to show that he sustained fracture to right leg and that surgery was done. Further the Tribunal found that in Ex.A-3, there is no mention that the claimant sustained injuries in the road traffic accident on 07-04-2001.

From the perusal of the record it could be seen that Station House Officer, Jakranpally, sent application for examination of the claimant to Medical Officer, Pragathi Nursing Home, private hospital at Nizamabad. But Dr. L.Ramulu, who is the Assistant Civil Surgeon, Government Civil Hospital, Nizamabad District, issued wound certificate Ex.A-3, stating that he treated the claimant in Pragathi Hospital as out patient on 07.04.2001 at 4.00 p.m. When the requisition is sent to a private hospital, it is unimaginable how that Government doctor could issue the certificate on the letter head of the private nursing home, using his official seal as Assistant Civil Surgeon, Government Hospital, Nizamabad District. The claimant failed to explain this circumstance, which creates doubt about the veracity of Ex.A-3 wound certificate.

In the present appeal, for disbelieving Ex.A-3, this court is not taking into the remarks made by this court in the earlier appeal in AAO 3518 of 2004, touching his character or professional ability. This court found that there is discrepancy between the averments made in the claim petition with regard to injuries sustained by the claimant and the evidence on record. Further this court found that the claimant failed to prove that he sustained injuries in the road accident. Further, Ex.A-3 is disbelieved, because, as per the circumstances noted above, its veracity is very much in doubt.

The judgment relied on by the learned counsel for the claimant is not applicable to the facts of the present case, for the reason that in the said judgment, there is no dispute with regard to medical certificate and there the medical certificate issued therein, was found to be a public document. In the present case, the medical certificate was issued by a private nursing home and hence it cannot be said that it is a public

document and further in the said certificate, there is no mention that the claimant sustained injuries in the road accident and there is any amount of doubt with regard to its veracity.

For the foregoing reasons, it is clear that the claimant failed to prove that he sustained injuries in the accident and the Tribunal right dismissed the claim petition and hence no exception can be taken. The issue framed is accordingly answered and the appeal is dismissed.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

A. RAJASHEKAR REDDY, J

Date: 19—02—2019

AVS

