

HONOURABLE SRI JUSTICE K. LAKSHMAN

M.A.C.M.A. No.3703 OF 2005

JUDGMENT:

Feeling aggrieved by the order, dated 27.10.2005, in OP No.19 of 2005 passed by MACT – cum – III Additional District Judge, Karimnagar, the appellant-claimant filed the present appeal.

2. Vide the aforesaid order, the Tribunal has dismissed OP No.19 of 2005, filed by the appellant-claimant. Aggrieved by the said order, the appellant-claimant preferred the present appeal.

3. Heard the learned counsel for the appellant and learned counsel for the respondents.

4. The claimant – appellant filed OP No.19 of 2005 before the Tribunal claiming compensation of Rs.1,00,000/-, contending that on 13.12.2003 she was going on a motorcycle bearing No.AP 15 K 7278 as pillion rider to purchase kirana provisions and one Md. Habibuddin was riding the motorcycle. While so, at about 1.30 p.m., when they reached Bizigeersharief turning, an APSRTC Bus, bearing No.AP 10 Z 3980 driven by the 1st respondent came in opposite direction in a rash and negligent manner and dashed the two wheeler on which the petitioner was travelling, due to which the petitioner fell down and sustained injuries. Immediately, the petitioner was taken to a private hospital at Jammikunta and from there, she was referred to Jaya Hospital, Hanamkonda, for better treatment. In the said hospital the

petitioner was treated as in-patient for (17) days, CT scan and X-rays were also taken. It was further contended by the appellant that she sustained injuries on her head, waist and right thigh and she spent about Rs.25,000/- towards treatment and medicines. Due to the said injuries, she was unable to attend the Anganwadi teacher job for a period six months and still she is suffering from giddiness and unable to do even tailoring work also. With the said contentions, she filed the above said OP claiming an amount of Rs.1,00,000/- towards compensation.

5. The 2nd respondent Corporation filed its counter before the Tribunal contending that the accident was occurred due to the rash and negligent driving of the rider of the motorcycle, and that the rider of the motorcycle was not examined. According to the 2nd respondent, the rider of the motorcycle is the better person to speak about the manner of accident. The appellant was a pillion rider, so there is no chance for her to observe the manner of the accident. It was further contended by the 2nd respondent Corporation that there was delay of four days in lodging the complaint. The husband of the petitioner was Upa-Sarpanch of the village at the relevant point of time and even though the appellant got knowledge about lodging of complaint, she did not lodge the complaint immediately. The 2nd respondent has also disputed with regard to the income and age of the petitioner and pleaded that the claim petition has to be dismissed for non-joinder of

proper parties i.e. the rider of the motorcycle and the owner and insurer of the vehicle.

6. The Tribunal, on consideration of the record, dismissed the above said OP vide the impugned order.

7. Impugning the said order, the learned counsel for the appellant – claimant would contend that the appellant – claimant fell down from the vehicle and sustained injuries on her head, waist and right thigh. She was in hospital for 17 days and CT scan and x-rays were taken. By referring the same, learned counsel for the appellant would contend that due to the said injuries and hospitalization of the appellant, neither the appellant nor her husband lodged the complaint immediately. The delay in lodging the complaint is not fatal to the case of the appellant. The Tribunal without considering the said fact, dismissed the claim petition filed by the petitioner. In support of his contention, learned counsel relied upon a judgment reported in **Bodege Padma v. Makula Shanker**¹. In the said case, this Court held that delay in lodging the complaint is not fatal to the case of the claimants claiming compensation in a motor accident. This Court further held that the claimant, who sustained injuries and their family members, would be under shock and tension and they will concentrate more on the treatment and other things and normally, they will not concentrate on lodging of FIR with the police, making claim under

¹2012(5) ALT 559

MV Act etc. In the said circumstances, this Court in the above said judgment held that delay in filing the FIR can be waived.

8. In the present case also, the accident was occurred on 13.12.2003 and appellant's husband lodged complaint on 17.12.2003. The Tribunal found fault with the said delay on the ground that the husband of the claimant was Upa-Sarpanch, they are aware of the legal proceedings and even then they failed to lodge the complaint. The said reasoning given by the Tribunal is not proper and correct analogy. As stated above and also as held by this Court in the above referred case, the injured and his family members would concentrate only on the treatment and other related issues and normally they will not concentrate on lodging of FIR. There is no dispute with regard to the accident. Therefore, the delay in lodging FIR can be waived and condoned.

9. The next issue is with regard to nature of accident and the contributory negligence of the driver of the vehicle. As stated above, it is the specific contention of the appellant that on 13.12.2003 at about 1.30 a.m., she was proceeding on a Hero Honda Motor Cycle as pillion rider for purchase of provisions, and one Md. Habibuddin was riding the motor cycle belongs to her husband and when they reached Bizigeersharief turning, an RTC bus came in the opposite direction and dashed their motorcycle, due to which she fell down and received injuries in the manner stated above. Her husband lodged Ex.A-1 FIR and the police after investigation, filed Ex.A-2 charge sheet. On

perusal of Ex.A-1 FIR and Ex.A-2 Charge Sheet, the deposition of PW.1 and also in the absence of contra evidence, this Court can safely conclude that the accident was due to rash and negligent driving of the driver of the RTC bus – 1st respondent. But, the Tribunal gave a finding that the appellant failed to prove that the accident occurred due to the rash and negligent driving of the 1st respondent. The Tribunal also referred that a suggestion was given to PW.1 that the accident was due to rash and negligent driving of the motorcycle by its rider, but the same was denied, and that a suggestion was given to RW-1 that the accident was due to his negligence, but RW-1 also denied the same and that RW-1 is better person to speak about the manner of the accident. By referring the said depositions, the Tribunal held that the appellant – claimant failed to prove the accident occurred due to rash and negligent driving of the 1st respondent. In fact, according to this Court the reasoning given by the Tribunal is contrary to the depositions and material available on record. The Tribunal failed to refer Ex.A-1 FIR and Ex.A-2 charge sheet. Just because a suggestion was given to PW.1 that the accident was due to rash and negligent driving of the rider of the motorcycle and which was denied by PW.1 and also a suggestion given to RW-1 that the accident was due to his negligence which was also denied by RW-1, driver of the bus, and that he is also a better person to speak about the manner of the accident. It is an admitted fact that RW-1 is the driver of the bus. Ex.A-1 FIR and Ex.A-2 charge sheet are against RW-1. In view of the same, it is quite natural that RW-1 will depose that the

accident was not due to his rash and negligent driving. The Tribunal without considering the said basic aspect, gave a finding that the accident was not due to rash and negligent driving of the 1st respondent. The said finding is erroneous. Therefore, the accident was due to rash and negligent driving of the 1st respondent, driver of the bus belongs to 2nd respondent.

10. Now, the other question falls for consideration is with regard to quantum of compensation. As per Ex.A-2 charge sheet, the age of the appellant – claimant is shown as 23 years. She used to work as Anganwadi Teacher and also doing tailoring work. According to her, she used to get Rs.3,000/- per month. She has also filed Ex.A-3 wound certificate issued by Jaya Hospital, Hanmakonda, Ex.A-4 -certified copy of form No.54, Ex.A-6 - blood report, Ex.A7 - prescriptions, Ex.A-8 - bills (48 in number), Ex.A9 - CT Scan films (27 in number), Ex.A-10 - X-ray film. She has also examined PW.2 Doctor, who treated her. According to him, the appellant received injuries on head, waist and right thigh. The same is supported by Ex.A3 - wound certificate and EXs.A4 to A10 (documents referred supra).

11. As stated above, the Tribunal dismissed the OP on the ground of non-making the owner of the motorcycle and the rider of the motor cycle as parties to the OP, and the delay in lodging the complaint.

12. It is relevant to note that the Motor Vehicle Act, 1988, is a beneficial legislation and the benefit should be given to the injured. In the present case, the appellant is the injured for whose benefit the said enactment was brought in by the Parliament. The Tribunals shall not deny the compensation on technicalities including the delay in lodging of complaint and non-making the other parties as parties to the OP. The Tribunal has to consider with regard to the accident, manner of the accident, other aspects such as age, wage, treatment particulars, medical bills, earning capacity, pain and suffering etc. In the present case, the Tribunal instead of assessing the same, dismissed the application on the technical grounds as stated above.

13. In view of the above said discussion, this Court is of the considered view that the appellant is entitled for compensation as per MV Act and the 2nd respondent, being the owner of the vehicle is liable to pay the same.

14. As stated supra, as per Ex.A2 charge sheet, the appellant was aged about 23 years at the time of accident and she used to earn an amount of Rs.3,000/- per month, which is reasonable. Admittedly, the appellant – claimant sustained injuries on her head, waist and right thigh. She was in hospital for (17) days, CT scan and X-rays were taken. The same are evident from Ex.A-3 wound certificate, Ex.A-6 blood report, Ex.A-7 prescriptions, Ex.A-9 CT scan films (27 in number) and Ex.A-10 x-ray films. Therefore, she is entitled for the following amounts towards compensation:

1. Injuries	..	Rs.25,000-00
2. Transportation	..	Rs. 5,000-00
3. Clothes	..	Rs. 1,000-00
4. Extra nourishment	..	Rs.15,000-00
5. Loss of monthly earnings	..	Rs.12,000-00
6. Medical Bills	..	Rs.22,000-00

Total	..	Rs.80,000-00

15. Accordingly, the appeal is allowed in part and the claim petition filed by the appellant before the tribunal is allowed with costs, granting compensation of Rs.80,000/- (Rupees eighty thousand only) with interest @7.5% per annum from the date of petition till realization, to the appellant. The 2nd respondent shall deposit the said amount with interest and costs within one month from the date of receipt of certified copy of this judgment. On such deposit, the appellant – claimant is entitled to withdraw the same. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

K. LAKSHMAN, J

06.02.2020

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