

THE HON'BLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No.1762 of 2007

JUDGMENT:

Heard both learned counsel for the appellant/insurer as well as learned counsel for the respondents/claim petitioners.

2. The appellant/second respondent/insurer (hereinafter the respondent) has preferred this appeal challenging the liability against the decree and order dated 08.02.2027 in O.P.No.644of 2005 on the file of Chairman-Motor Vehicles Accidents Claims Tribunal-Cum-Principal District Judge at Nalgonda.

3. The brief facts of the case are that on 20.02.2005 while the deceased/Mallesh was proceeding as pillion rider on a scooter bearing registration No.AP-28-198 near Batasari Hotel at the outskirts of Pembarthi village an ambassador car bearing registration No.AP-23-A-1663 (hereinafter 'the car') driven by its driver in rash and negligent manner struck

the scooter from behind, as a result he slumped and died the spot. Thereupon parents of the deceased filed petition claiming compensation of Rs.7,69,000/-.

4. The learned Tribunal, considering the materials on record, held that the accident occurred due to rash and negligent driving of the car and awarded Rs.2,13,500/- with 7.5% interest per annum against the owner and insurer of the car/first and second respondents.

5. In appeal, the respondent contended that the tribunal erred in ignoring the manifest delay in lodging the complaint and the admission of eye witness/PW3 in cross examination that the crime vehicle was referred as unknown vehicle and that after 36 days of the incident police have filed report by showing involvement of the car without any corroborating material and that the first claimant/PW-1 in her cross examination stated that the owner of the car is her relative. Thus, the collusion among the parties to cause financial loss

to the insurer can clearly be deciphered. Thus, the tribunal should have exonerated the respondent from its liability.

6. On the otherhand, the claim petitioners pleaded that the tribunal has considered this objection on right perspective and properly in fixed the liability against the insurer, in absence of any contra material to discard the evidence on record. Hence, no valid ground is made out for interference.

7. In this position, the point arises for determination is

“Whether the crime vehicle/ambassador car is planted for the purpose of insurance claim as contended by the respondent”?

8. It is settled proposition that the onus lies on the party who asserts an existence of a fact. Though the false implication is vehemently contested, the respondent did not place any specific material before the Court. The circumstances forwarded to prove the theory of false implication are, the reference of unknown vehicle in the First

information statement/Ex.A-1 and after 36 days of the occurrence the car has emerged crime vehicle without any tenable basis. To add, the petitioner is her cross examination admitted that the owner of the car/1st respondent is her relative.

9. These factors are extending a situation of possibility as claimed by the respondent. However, any amount of possibility and suspicion cannot take the place of proof. Be that as it may, in this petition it is averred that the crime vehicle has hit the scooter from behind and after the accident the rider also fell unconscious. Therefore, the rider/PW-3 had a slim chance noticing the crime vehicle, therefore, the PW-3 referring to an unknown vehicle in the Ex.A-1/F.I.R is natural. Further at any stretch, the police showing the car as crime vehicle after 36 days or summoning the driver and vehicle by the owner certainly cannot be read as proof of false implication but, may be as suspicious circumstance. To know what are the aspects

taken into consideration to charge sheet the accused and its sustainability could have been tested by examining the investigating officer in the placed proceedings. No such effort was made by the respondent. To note, surrender of the accused and presenting himself for prosecution and penal liability, cannot be brushed aside. Though there is suspicion as the material on record is indicating the possibility of involvement of the vehicle in the accident, as there is no evidence weighing in favour of the either party, the factor favorable to the claimant shall be taken into account would be just and appropriate.

10. Per contra, in the authority relied on by the respondent between *United India Insurance Company Limited, Sanga Reddy town, Medak District Vs. G. Mallaiah and others*¹ a lorry was specifically referred to in the first information statement whereas the case was built up as the tractor was crime vehicle by charge sheeting un-named accused. The

¹ 2010 (6) ALD 13

registration number of tractor was added in handwriting and the record was reflecting that none of the witnesses during investigation referred to involvement of tractor in the accident. Thus, held that there was collusion among the parties including police.

11. Therefore, the factual position of the present case is distinguishable. The authority is of no help to conclude the fact of false implication of the crime vehicle as asserted. Resultantly, the finding of the tribunal as to the liability of the respondent does not call for any interference and the appeal fails on merit. In effect, appeal is dismissed. No costs.

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

N.TUKARAMJI, J

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