

The Hon'ble Sri Justice T. Sunil Chowdary

MACMA No.820 OF 2009

JUDGMENT:

1 This appeal is filed by the claimant challenging the judgment and award dated 31.12.2008 passed in MVOP No.165 of 2004 on the file of Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Kadapa, wherein and whereby the claim petition filed by the appellant was dismissed.

2 For the sake of convenience, the parties to this appeal are hereinafter referred to as they are arrayed before the Tribunal.

3 The facts leading to the filing of the present appeal are briefly as follows:

4 On 22.08.2002 at 2.00 PM the petitioner along with Gangireddy and Obul Reddy were proceeding towards Peda Chapalli for purchasing he- buffalo and when they reached Bayanapalli village of Kamalapuram Mandal, the driver of a Jeep bearing No.AP 03-G-4455 had driven the same in a rash and negligent manner and dashed against the petitioner resulting grievous injuries to the petitioner on the chest and other parts of the body. The petitioner took treatment as inpatient in SVIMS hospital, Tirupati for 12 days and spent Rs.30,000/- towards medicines. In connection with the said accident, the Station House Officer, Kamalapuram police station registered a case in Cr.No.82 of 2002 under section 338 of IPC against the driver of the Jeep. The case of the claimant is that by the date of accident, he was aged about 34 years and was earning Rs.5,000/- p.m. as agriculturist. Due to the injuries the petitioner could not attend his work for long time thereby lost his income. As on the date of accident, the offending Jeep which belongs to the first respondent was insured with the second respondent. Hence, the petitioner filed the petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.1,50,000/- from the respondents.

5 The first respondent who is the driver of the Jeep remained ex

parte. The second respondent – insurer filed written statement denying the material averments made in the petition, inter *alia* contending that the accident occurred due to the negligent act of the petitioner and that there was no negligence on the part of the driver of the Jeep. The petitioner has not sustained fracture to the ribs and mentioned in the petition. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. The first respondent had violated the terms and conditions of the policy, therefore, this respondent is not liable to pay compensation to the petitioner.

6 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the accident occurred on 22.08.2002 at 2.00 PM due to the rash and negligent driving of the Jeep bearing No.AP-03-G-4455?
- ii. Whether the petitioner is entitled to compensation?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.17 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

8 The Tribunal, after appreciating the oral, documentary evidence and other material available on record, dismissed the petition on the ground that the petitioner failed to establish the factum of accident. Feeling aggrieved by the judgment and award passed by the Tribunal, the claimant filed the present appeal.

9 Sri K.Rathangapani Reddy, the learned counsel for the petitioner submitted that the finding of the Tribunal that the petitioner failed to prove the factum of accident is contrary to the recitals of Exs.A.1 and A.3. He further submitted that the findings of the Tribunal are not based on any material.

10 *Per contra*, Sri B. Devanand, the learned counsel for the second respondent – insurance company submitted that the Tribunal rightly

considered the oral and documentary evidence in right perspective and dismissed the petition. He further submitted that the amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant.

11 Now the points that arise for consideration in this appeal are as follows:

- a. Whether the accident had occurred due to the rash and negligent driving of the driver of the Jeep bearing No.AP-03-V-4455?
- b. Whether the petitioner is entitled to compensation? If so, to what amount?

Point No.1:

12 In order to prove the factum of accident, the petitioner examined himself as P.W.1 and got marked Exs.A.1 and A.3. As seen from the testimony of P.W.1, the accident occurred due to the rash and negligent driving of the driver of the Jeep. In the cross-examination of P.W.1, nothing is elicited to shake his testimony so far as the manner of accident is concerned. No suggestion was put to P.W.1 that no accident occurred on 22.08.2002 as pleaded by him. A perusal of Ex.A.1-First Information Report clearly reveals that on 23.08.2002 at about 8.00 AM, the Station House Officer, Kamalapuram received intimation from Proddatur Government Hospital about sustaining of injuries by the petitioner in a road accident that occurred on 22.08.2002. A perusal of Ex.A.1 further reveals that the concerned police official recorded the statement of P.W.1 on 22.08.2002 at about 11.25 PM. A perusal of Ex.A.1 clearly reveals that the Station House Officer, Kamalapuram made an entry in General Diary on 22.08.2002 itself. In Ex.A.1 it is categorically mentioned that the Jeep bearing No.AP-03-G-4455 met with accident on 22.08.2002. A perusal of the record reveals that the Station House Officer, Kamalapuram registered a case after receiving of wound certificate and other relevant documents from the concerned hospital. A perusal of the record reveals that the Station House Officer, Kamalapuram investigated into the matter and filed charge sheet-Ex.A.3 against the driver of the Jeep. The oral testimony of

P.W.1 is fully supported by the recitals of Exs.A.1 and A.3 so far as the manner of accident and involvement of the Jeep in question is concerned. In the written statement filed by the second respondent no specific plea was taken that no accident occurred on 22.08.2002 as pleaded by the petitioner in the petition. The factum of accident is not specifically denied by the second respondent in the written statement. It is not out of place to extract hereunder the relevant portion in para No.6 of the award passed by the Tribunal:

“However, the material filed shows the first information of the accident was given to the police three months afterwards. No reason was given as to why such a long time was taken. This creates a doubt with regard to the manner of accident. Even in the charge sheet no reason was mentioned with regard to the identity of the vehicle.”

13 A perusal of the above portion gives an impression as if the petitioner for the first time lodged the complaint three months after the accident. As observed earlier, on 22.08.2002 itself, the concerned Head Constable recorded the statement of the petitioner. Had the Tribunal evinced any interest to go through the recitals of Exs.A.1 and A.3, the finding of the Tribunal would have been otherwise. The finding of the Tribunal is contrary to the recitals of Exs.A.1 and A.3. Viewed from any angle, the finding recorded of the Tribunal is not sustainable. The oral testimony of P.W.1 coupled with Exs.A.1 and A.3 clinchingly establish that the accident occurred on 22.08.2002 due to the rash and negligent driving of the driver of the Jeep bearing No.AP 03-G-4455, which resulted injuries to the petitioner. Hence the point No.1 is answered in favour of the petitioner and against the second respondent.

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Point No.2:

14 As per the testimony of P.W.1, due to the accident he sustained injuries on various parts of the body and he took treatment in Government Hospital, Proddutur as well as in SVIMS, Tirupati. A perusal of Ex.A.2 reveals that the petitioner sustained grievous injury on chest and two simple injuries. The petitioner also sustained fracture to his left 6th, 7th

and 8th ribs. A perusal of Exs.A.12 and A.13 reveals that the petitioner took treatment as inpatient for 12 days in SVIMS, Tirupati. Due to the fractures and injuries, the petitioner might have suffered a lot. Taking into consideration the nature of fracture and injuries sustained by him as well as the period of treatment taken by him, I am inclined to award an amount of Rs.20,000/- towards pain and suffering.

15 A perusal of Ex.A.10 reveals that the petitioner spent an amount of Rs.12,785/- towards medicines. It is a known fact that the patients who took treatment in Government Hospitals have to purchase medicines from outside. A perusal of the record reveals that the petitioner was advised to take X-Rays. Taking into consideration Exs.A.10 and A.15, I am inclined to award an amount of Rs.15,000/- towards medicines and investigations.

16 The accident occurred near Proddutur. Immediately after the accident, the petitioner was shifted to Government Hospital, Proddutur and from there to SVIMS, Tirupati. A perusal of Ex.A.11 reveals that the petitioner paid Rs.4,200/- towards ambulance charges. Hence I am inclined to award an amount of Rs.4,500/- towards transportation charges.

17 In view of the fracture to ribs and other injuries, the petitioner might not have attended the regular work for a period of three months including the period of treatment. A perusal of Ex.A.16 and A.17 reveals that the petitioner is an agriculturist by profession. Having regard to the facts and circumstances of the case, I am of the view that the petitioner may earn Rs.5,000/- p.m. as agriculturist. In that view of the matter, the petitioner is entitled to Rs.15,000/- towards loss of earnings.

18 As per the testimony of P.W.2, the petitioner sustained 25% permanent disability. Ex.A.14 is the disability certificate issued by P.W.2. In the cross examination P.W.2 in unequivocal terms stated that he did not treat the petitioner. If really the petitioner sustained permanent disability, what prevented him to obtain a disability certificate from the concerned medical board or SVIMS, Tirupati where he had taken treatment? There

is no whisper in the testimony of P.W.2 how the petitioner sustained 25% disability. The possibility of producing this type of certificates in order to claim more compensation cannot be ruled out completely. Having regard to the facts and circumstances of the case, it is not safe to rely on Ex.A.14. Hence I am of the considered view that the petitioner did not sustain any disability.

19 Thus, the amount of compensation awarded to the petitioner under various heads is as follows:

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|-------------------------------|-------------|
| Pain and suffering: | Rs.20,000/- |
| Medicines and investigations: | Rs.15,000/- |
| Transportation charges: | Rs.4,500/- |
| Loss of earnings: | Rs.15,000/- |
| | ----- |
| TOTAL | Rs.54,500/- |
| | ----- |

20 The petitioner is entitled to interest at 7.5% p.a. from the date of filing of the petition till the date of realization with proportionate costs in the Tribunal. The first respondent being the owner of the Jeep bearing No.AP 03-G-4455 is vicariously liable for the wrong acts done by his driver in the course of employment. In the claim petition it is mentioned that the Jeep bearing No.AP 03-G-4455 was insured with the second respondent with effect from 26.04.2002 to 25.04.2003. This fact was not denied by the second respondent. Therefore, the insurance policy was in force as on the date of accident i.e. 22.08.2002. Hence the second respondent has to indemnify the liability of the first respondent. Therefore, the respondents 1 and 2 are jointly and severally liable to pay the compensation to the petitioner.

21 This appeal is accordingly allowed in part. No costs. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 30.01.2015
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