

HONOURABLE SRI JUSTICE M. GANGA RAO

MACMA.No.3276 of 2005

JUDGMENT:

The appellant-injured claimant filed this appeal against the judgment and decree dated 09-08-2005 passed in MVOP.No.692 of 2002 by the Motor Accident Claims Tribunal-cum-II Additional District Judge, Rajahmundry, East Godavari District, dismissing the claim petition.

2. The appellant-claimant filed the claim petition under Section 166 of the Motor Vehicles Act read with Rule 455 as amended by Act 54 of 1994 claiming a compensation of Rs.1,50,000/- against the respondents for the injuries sustained by him in a motor accident alleged to have occurred on 14-09-2001 at Bayyannagudem village. The appellant alleged that on 14-09-2001, he went to Kovvuru and after attending court work, he was returning on his Chetak scooter to go to Jangareddygudem and when he was at a distance of one kilometer to reach Bayyanagudem, at about, 8.30P.M. a bore wells lorry bearing No.KA 32/3840, was going in front of the appellant-claimant and all of a sudden it was reversed thereby dashed against the scooter on account of which the appellant-claimant fell down and sustained injuries. Immediately thereafter he was shifted to Government Hospital, Jangareddygudem and from there to Siva Hospital, Jangareddygudem and later he was shifted to Government Head Quarters Hospital, Eluru. The appellant alleged that after taking treatment for three days, he was shifted to the hospital of Dr. K.V. Subba Rao, M.S. Ortho, Rajahmundry, where he underwent operation. It is further alleged that the appellant-claimant incurred medical expenditure of Rs.40,000/- and that he sustained injury on the left thigh, left knee, left hand thumb and also sustained injury on the chest when the scooter handle entered on his chest. The appellant further alleged that since he sustained disability of

50%, he was unable to earn anything, and hence, he claimed a compensation of Rs.1,50,000/- against respondents 1 to 3.

3. Respondents 1 and 2 remained ex parte. The 3rd respondent-Insurance company filed its counter denying the averments of the claim petition. It was contended that the driver of the lorry had no driving licence and that the lorry has no valid permit. The accident did not take place due to rash and negligent driving of the lorry by its driver and that there was no negligence at all on the part of the driver. It also contended that the claimant claimed exorbitant compensation.

4. Based on the above pleadings, the Tribunal framed the following issues for trial:

- 1) Whether the petitioner sustained injuries due to rash and negligent driving of the vehicle by its driver R-1?
- 2) Whether the petitioner is entitled to receive compensation, if so, to what amount and against whom?
- 3) To what relief?

5. During the course of trial, on behalf of the claimant, PWs.1 to 4 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondents, no witness was examined and Ex.B.1 was marked.

6. Based on the evidence available on record, the Tribunal came to the conclusion that in the petition in Colum No.13, it was mentioned that immediately after the accident, the petitioner took treatment in Government Hospital, Jangareddigudem and later in Siva Hospital, Jangareddygudem and then shifted to Government Head Quarters Hospital, Eluru and that three days thereafter he was brought to the hospital of Dr. K.V. Subba Rao, Orthopaedic specialist at Rajahmundry. The Tribunal also held that in the body of the petition, it was mentioned that the petitioner was admitted in Siva Hospital, Jangareddygudem

where first aid was given to him. The Tribunal also held that on 06-10-2001 he was admitted in Government Hospital, Jangareddygudem and later he was referred to Government Head Quarters Hospital, Eluru, where he took treatment for three days and later got admitted in Dr.K. V. Subba Rao, M.S. Ortho Hospital in Rajahmundry where the operation was conducted for left thigh and steel rod was inserted and treatment was also given for knee joint. The Tribunal further held that the petitioner took only first aid in Siva Hospital, Jangareddygudem. The Tribunal further came to the conclusion that in the chief affidavit in the second page, the petitioner stated that immediately after the incident he was admitted at Government Hospital, Jangareddygudem and from there he was referred to Government Head Quarters Hospital, Eluru. The Tribunal further found that in view of lot of discrepancies in the evidence of PWs.1 to 4, the petitioner failed to prove the occurrence of the accident on 14-09-2001 and that he sustained injuries due to negligence of R-1.

7. In the facts and circumstances of the case and on hearing the learned counsel for both parties and on perusal of the evidence on record, this court finds that in view of several discrepancies between the evidence of PWs.1 to 4, the Tribunal has rightly concluded that the appellant-claimant miserably failed to prove the occurrence of the accident and that the evidence creates sufficient doubt that PW.1 might not have been received injuries or even if he received injury, he might not have received in the accident as afore stated and thus, the conclusions arrived at by the Tribunal do not suffer from any illegality or infirmity calling for any interference of this Court, and hence, the appeal is liable to be dismissed.

8. Accordingly, the appeal is dismissed. There shall be no order as to costs.

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

Date: 31st January, 2019

Ksn

M. GANGA RAO, J

HONOURABLE SRI JUSTICE M. GANGA RAO

M.A.C.M.A.No.3276 of 2008

31st January, 2019

Ksn