HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

MACMA No.2590 of 2012

JUDGMENT:

1. Aggrieved by the decree and order dated 16.05.2012 in MVOP No.549 of 2008 passed by the Chairman, Motor Accidents Claims Tribunal-cum- VIII Additional District and Sessions Judge (Fast Track Court) at Vijayawada (for short 'the Tribunal'), the National Insurance Company Limited rep. By its Divisional Manager, the 2nd respondent in MVOP preferred this appeal questioning the award passed by the Tribunal.

2. The parties will be referred to as arrayed in the MVOP for convenience.

3. The claimant had filed a petition under Sections 140 and 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.4,00,000/- for his injuries in a motor vehicle accident on 30.01.2008 at 18.30 hours.

4. The claimant's case is that on 30.01.2008 at about 18.30 hours, while the claimant was going on his Bajaj CT 10 Bike bearing No. A.P. 16 AN 3775 from his home and reached Swagruha Foods, Bandar Road, Vijayawada, and going towards Pandit Nehru Bus Station, Vijayawada, the 1st respondent, who was the rider-cum-owner of Hero Honda CD-Deluxe bearing No. A.P. 16 BB 4637 (hereinafter be

referred to as 'offending vehicle') rode the same rashly and negligently at high speed, without blowing the horn, and dashed the claimant. As such, the claimant fell and sustained injuries. Immediately after the accident, he was shifted to Help Hospital, Vijayawada, for treatment. , The Police, Suryaraopet police station, registered the report as a case in crime No. 18 of 2008 under Section 338 of the Indian Penal Code. The claimant was a practising R.M.P. doctor at Krishna Lanka, Vijayawada, for several years. Due to the accident, he has paralysis in the right hand and, as such, is unable to do his duties regularly without the help of others and is not in a position even to put his signature.

5. The 1st respondent remained exparte.

6. The 2nd respondent/ insurer of the offending vehicle filed a written statement denying the averments made in the claim petition and further contended that the particulars furnished by the petitioner were not tallied with the series of policies issued by it and, as such, there is no prima facie obligation to compensate the petitioner. It is further contended that no information about the accident was provided to the insurer, either by the offending vehicle's owner or the Police, per Section 158(6) of the M.V. Act. It is further contended that the claimant fell on the road due to the bike skid. Still, the respondents falsely implicated the offending vehicle in getting compensation. When the claimant's wife enquired about the incident,

the people at the hospital said it was due to the skid of the claimant's motorcycle. She sent her brother to enquire at the place of the incident and came to know that the first respondent was responsible for this accident due to the offending vehicle's rash and negligent riding, which are all false; moreover, the complaint was given on 01.02.2008, and the first respondent was arrayed to the claim petition for the sake of compensation. Hence, the second respondent/ insurance company is not liable to pay compensation.

7. Based on the pleadings, the Tribunal has formulated relevant issues. To prove the claim, on behalf of the claimant, PWs.1 to 3 got examined and marked Exs.A.1 to A.16; on behalf of the second respondent, RWs.1 and 2 got examined and marked Exs.X.1 to X.3.

8. After evaluating the evidence on record, the Tribunal held that the accident occurred due to the rash and negligent riding of the offending vehicle and awarded compensation of Rs.2,30,000/- together interest at the rate of 7.5% per annum from the date of the petition till the realization date against respondents.

9. I Heard both the learned counsel and Perused the record.

10. Learned counsel for the appellant/ 2nd respondent contended that the Tribunal failed to consider Ex.X.2-hospital intimation received by the Police, wherein it was mentioned that the accident occurred due to a bike skid. The Tribunal failed to appreciate that F.I.R. is registered

after two days against the offending vehicle, which was insured with the second respondent as an afterthought to claim compensation. The Tribunal also discarded the positive evidence of R.W.2, who categorically stated the intimation of sustaining injuries due to the skid of the vehicle, which is also admitted by P.W.2, an informant and no other than the wife of the injured. The Tribunal did not give any weight to Ex.X.2 and relied on F.I.R. and charge sheet stating that they are the evidence of gospel truth, and failed to note that the criminal case did not come to trial and settled before Lok Adalat for reasons best known to the claimant only. The Tribunal should have considered the written arguments of the insurance company.

11. Learned counsel for the claimant/ first respondent herein supported the Tribunal's findings and observations.

12. Now the point for determination is,

> Was the Tribunal justified in holding that the accident occurred due to the rash and negligent riding of the offending vehicle's rider?

POINT:

a. As seen from the grounds of appeal and the contentions raised on behalf of the appellant/ second respondent, the injuries sustained by the claimant and the amount of compensation awarded by the Tribunal are not challenged in this appeal. The injuries suffered by the claimant are established by Ex.A.1 - a certified copy of the wound certificate, and the treatment received by the claimant is established

by Ex.A.12; thus, these issues have reached finality and do not need to be discussed in detail.

b. As seen from the grounds of appeal and the submissions made on behalf of the appellant and the contentions raised in the MVOP, the respondent/insurance company has disputed the case as pleaded by the claimant regarding the manner of the accident.

c. The claimant, who was examined as P.W.1, testified that on 30.01.2008, at about 18.30 hours, while riding his Bajaj CT 100 Bike bearing No. A.P. 16 AN 3775 when he reached Swagruha Foods on Bandar Road, the 1st respondent, who was the offending vehicle's rider-cum-owner, rode his bike in a rash and negligent manner and dashed the claimant. As a result, the claimant slipped and fell on the road, suffering severe injuries to the right side of his head and other injuries. The claimant also examined his wife-K. Pavani Sri Gowry, as P.W.2, to prove the manner of the accident. She supported P.W.1's evidence regarding the manner of the accident and the injuries sustained by the claimant. PW.2 herself lodged the report before the Police. Based on PW.1's information, a case was filed against the first respondent in Crime Number 18 of 2008 under Section 338 IPC. Ex.A.16-charge sheet shows that the offending vehicle's rider, i.e., the first respondent, was charged for the accident.

d. R.W.s. 1 and 2 are examined on behalf of the respondents to support their case. R.W.2 is the Accountant of Help Hospital in Vijayawada, who testified about the treatment received by the injured in the

hospital, and the hospital intimation received by the Police is marked through him as Ex.X.2. He testified during cross-examination that Ex.X2 was not in his handwriting and was not sent by him, and further testified that P.W.2-claimant's wife filed a report with the Police after informing them under Ex.X2. The hospital authorities clearly stated in Ex.X.2 that the accident occurred due to the injured's vehicle skidding. The second respondent/insurance company disputes the manner of the accident based on the recitals in Ex.X.2. It is also claimed that the complaint was lodged and the same was registered as a case in Crime No.18 of 2008 two days after offending vehicle was insured with the second respondent. In this regard, R.W.1 testified that their insurance company insured the alleged offending vehicle. It is not his evidence that he witnessed the alleged accident. He denied the manner of the accident as alleged by the claimant.

e. In the case **Ravi vs Badrinarayan & Others**[1], the Apex Court held that

> "it is settled that delay in lodging F.I.R. cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to getting the victim treated rather than rushing to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the F.I.R. with the Police. Delay in lodging the

[1] Civil Appeal No. 1926 of 2011

> F.I.R., thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with closer scrutiny and, in doing so, should also scrutinize the contents of F.I.R. more. Suppose the Court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons; then, even if there is a delay in lodging the F.I.R., the claim case cannot be dismissed merely on that ground."

f. The purpose of lodging the F.I.R. in such cases is primarily to inform the Police and investigate criminal offences. Lodging of F.I.R. certainly proves the factum of the accident so that the victim can lodge a compensation case, but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of F.I.R. is vital in deciding motor accident claim cases, delay in lodging should not be treated as fatal for such proceedings if the claimant has demonstrated satisfactory and convincing reasons. According to column No.8 of FIR, the claimant was shifted to the Help Hospital, Vijayawada, for treatment. After receipt of medical intimation, the case came to be registered against the first respondent.

g. On the other hand, the investigation was conducted based on the report and laid the charge sheet against the first respondent. It is not the second respondent's case that material facts relating to the accident are suppressed or fabricated because of the delay. If that is so, those facts would have come out in the investigation. After carefully reading the material placed before the Court, this Court views that the Tribunal has reached a correct conclusion on the

contentions raised by the second respondent. In the charge sheet, it is clearly stated that on 30.01.2008 at about 18.30 hours, the accused, being the rider of the offending vehicle, while proceeding from west to east on Bandar Road, i.e., from old Bus Stand towards Benz Circle, drove his vehicle at high speed in a rash and negligent manner and when reached near Swagruha Foods Centre, dashed against PW.1, while he was crossing Bandar Road from north to south, i.e., from American Hospital road towards State Guest House through Pingali Venkaiah Street. As a result of which, P.W.1 fell on the road with his motorcycle and sustained a head injury. The second respondent placed no evidence to show that the contents of the charge sheet were incorrect.

h. In the case **of K. Rajani and others V. M. Satyanarayana Goud and others**[2] this Court observed that:

> "when the insurance company came to know that the police investigation is false, they must also challenge the charge sheet in appropriate proceedings. If at all the findings of the Police are found to be incorrect, it is for the insurance company to produce some evidence to show that the contents of the charge sheet are false."

i. In the case of **Bheemla Devi V. Himachal Road Transport Corporation**[3] the Apex Court observed as follows:

> "It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a

[2] 2015 ACJ 797
[3] 2009 ACJ 1725 (S.C.)

> particular manner may not be possible to be done by the claimants. The claimants are merely to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond a reasonable doubt could not have been applied".

j. Nothing on record suggests that the Investigating Officer filed a charge sheet against the offending vehicle's driver without conducting a proper investigation. It is also difficult to hold that the Police Officer fabricated a case. In a proceeding under the M.V. Act, where the procedure is a summary procedure, there is no need to go by strict rules of pleading or evidence. The document having some probative value, the genuineness of which is not in doubt, can be looked into by the Tribunal for getting preponderance of probable versions. The preponderance of probabilities is the touchstone for concluding rashness and negligence and the accident's mode and manner of happening. As such, it is by now well settled that even F.I.R. or Police Papers, when made part of a claim petition, can be looked into for giving a finding regarding the accident.

k. The Tribunal has not accepted the observations made by the Investigating Officer in the charge sheet making the offending vehicle's rider responsible for the accident. The charge sheet contents also support the claimant's case regarding the manner of the accident. Reading the documents placed before the Tribunal,

there is clear evidence that the accident happened because of the negligence of the offending vehicle's rider.

13. This Court views that the offending vehicle's rider is the best person to speak about the manner of the accident or non-involvement of the offending vehicle in the accident. The second respondent/ insurance company has not taken steps to prove its contention by summoning the offending vehicle's rider. A standard rule is for the claimant to prove negligence. But in accident cases, hardship is caused to the claimants as the actual cause of the accident is not known to them but is solely within the knowledge of the respondents who caused it. It will then be for the respondents to establish the accident was due to some other cause than their negligence. Given the discussion mentioned above, I do not find any substance in the appeal. I do not see any reason to interfere with the impugned order in the present appeal, and the appeal is liable to be dismissed.

14. Accordingly, the appeal is dismissed without costs. The order dt.16.05.2012 passed by the Tribunal in MVOP.No.549 of 2008 is confirmed.

15. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE T.MALLIKARJUNA RAO

Date: 04.04.2023
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