

APHC010883752016



IN THE HIGH COURT OF ANDHRA
PRADESH AT AMARAVATI [3364]

WEDNESDAY, THE TWENTY SEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU

**MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO:
1219/2016**

Between:

1. Busetty Srinivasulu, S/o Ramaiah, aged about 40 years,
Weaver, R/o Rangapuram Village, Appanapalli Post, Khajipet
Mandal, Kadapa District.

...APPELLANT/PETITIONER

AND

1. P. Srinivasulu, S/o Ramaiah, Owner of Hero Honda Passion Plus
bearing No.A.P.04-J-1927, R/o Rangapuram Village,
Appanapalli Post, Khajipet Mandal, Kadapa District.
2. United India Insurance Company Limited, rep. by its Divisional
Manager, Dhobighat Road, Kadapa Town & District.

...RESPONDENTS

The Court made the following:

JUDGMENT:-

Challenge in this MACMA is to the award, dated 14.03.2012 in
M.V.O.P.No.745 of 2007, on the file of the Chairman, Motor Accident
Claims Tribunal-cum-Family Court-cum-VI Additional District Judge,
Kadapa ("Tribunal" for short), whereunder the Tribunal dealing with a

claim made by the petitioner towards compensation of Rs.2,50,000/- with regard to the injuries received by him in a motor vehicle accident occurred on 19.08.2005, dismissed the same.

2) The parties to this MACMA will hereinafter be referred to as described before the Tribunal for the sake of convenience.

3) The case of the petitioner, in brief, according to the averments set out in the claim before the Tribunal, is that on 19.08.2005 in the early morning, the petitioner along with Dande Narasimhulu left the village to go to Kadapa. At about 4-00 a.m., when they were proceeding near Bala Pullaiah Swamy Temple, Appanapalli Village, on left side of the road, the rider of the motorcycle bearing No.A.P.04-J-1927 (hereinafter will be referred to as "offending vehicle"), drove the same in a rash and negligent manner with high speed. He came in wrong side and dashed the petitioner. On account of the same, the petitioner sustained fracture of left thigh and some other injuries. The rider of the offending vehicle shifted the petitioner to a private hospital in Kadapa and Dande Narasimhulu helped him and accordingly the petitioner was admitted in the clinic. Afterwards, he was shifted to Pragathi Orthopaedic and General Hospital, Kadapa and admitted in the hospital on 30.08.2005. Later the petitioner preferred a report to the police about the rash and negligent riding of the rider of the offending vehicle. Since the accident took place, the rider of the

offending vehicle got admitted him in a private hospital, Dr.Sanjeevaiah, Ortho, Kadapa. Later, the petitioner was taken to Pragathi Orthopaedic and General Hospital, Kadapa. Dr.Sanjeevaiah treated the petitioner and conducted a surgery to him and inserted a rod. The surgery failed and he was shifted to NIMS hospital, Hyderabad on 13.04.2006. On 28.04.2006 a surgery was conducted to the petitioner and another rod was substituted in the place of old rod. He was discharged on 06.05.2006. The petitioner visited the hospital for four times. He spent Rs.40,000/- towards medical expenses and Rs.5,000/- towards attendant. He spent Rs.15,000/- towards transport to hospitals. The accident was occurred on account of rash and negligent act of first respondent and the offending vehicle was insured with the second respondent. Hence, they are liable to pay compensation.

4) The first respondent remained *exparte*.

5) The second respondent got filed a written statement denying the case of the petitioner and the substance of the contention is that according to the report, accident took place on 19.08.2005, but the report was filed in Khajipet Police Station on 04.12.2005. According to the wound certificate, the petitioner was brought to the hospital on 30.08.2005. The report was lodged belatedly. The petitioner did not reveal anything before the Doctors

who treated him about the fact that he received injuries in the road accident. Hence, the petition is liable to be dismissed.

6) On the basis of the above pleadings, the Tribunal settled the following issues for trial:

(1) Whether the claimant received injuries in the accident due to rash and negligent driving of rider of the motorcycle of 1st respondent?

(2) Whether R.1's driver was having valid licence at the time of the accident?

(3) Whether the claimant is entitled for compensation and if so, for what amount and from whom?

(4) To what relief?

7) During the course of enquiry, on behalf of the petitioner, P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A.8 were marked. No witnesses were examined on behalf of the respondents.

8) The Tribunal on considering the oral as well as documentary evidence, came to a conclusion that the petitioner failed to explain the delay in lodging report and he did not reveal anything before the medical officer, who first treated him and that the case of the petitioner is suspicious and with the above said observations, dismissed the claim of the petitioner. Felt aggrieved of the same, the unsuccessful petitioner filed the present MACMA.

9) Now, in deciding the present MACMA, the point for consideration is whether the award, dated 14.03.2012 in M.V.O.P.No.745 of 2007, on the file of the Chairman, Motor Accident Claims Tribunal-cum-Family Judge-cum-VI Additional District Judge, Kadapa, is sustainable under law and facts and whether there are any grounds to interfere with the same?

POINT:-

10) M/s. Nalluri Sahithi Aparna, learned counsel, representing Sri Karri Murali Krishna, learned counsel for the appellant/petitioner, would contend that the mere delay in lodging the report with regard to the road accident is not fatal to the claim in M.V.O.P. and the Tribunal wrongly dismissed the claim. As the petitioner was taking treatment in various hospitals, report could not be lodged immediately. The petitioner quietly proved the nature of injuries sustained by him. She would rely upon the decisions in **T. Lakshmiammal and another vs. Jothi Anandan¹ and The National Insurance Company Limited vs. Komaravolu Srinivasa Baradwaj and another (M.A.C.M.A.No.2590 of 2012, dated 04.04.2023)** to contend that mere delay in lodging the report would not affect the claim.

11) Sri V. Veerabhadra Chary, learned counsel for the second respondent would contend that the petitioner did not reveal that he

¹ 1997-1-L.W.313

received injuries in the motor vehicle accident firstly when he was taken to Dr. Sanjeevaiah, Ortho, Kadapa. Later, the petitioner claimed to have got treatment at Pragathi Orthopaedic and General Hospital, Kadapa. Even the said wound certificate was signed on 05.12.2005 which is one day after lodging report. It is brought into picture so as to lay a claim. The whole evidence adduced by the petitioner suffers with any amount of falsity. Simply because the police filed charge sheet, case of the petitioner cannot be substantiated. With the above submissions, he would submit that the appeal is liable to be dismissed.

12) As seen from the evidence of P.W.1, who is the petitioner, he put forth his case in tune with the pleadings. Through his examination, Ex.A.1 to Ex.A.8 were marked. Ex.A.1 was certified copy of FIR in Cr.No.111 of 2005 of Khajipet Police Station. Ex.A.2 was certified copy of wound certificate. Ex.A.3 was certified copy of charge sheet. Ex.A.4 was receipt issued by Indian Red Cross Society for Rs.550/-. Ex.A.5 was medical prescriptions 8 in number. Ex.A.6 was three outpatient cards issued by NIMS Hospital, Hyderabad. Ex.A.7 was the disability certificate issued by the Government Hospital, RIMS, Kadapa. Ex.A.8 was certificate issued by the President, Sri Saptagiri Silk Weavers Co.Op. Production and Sale Society Limited, Rangapuram.

13) Turning to the evidence of P.W.2, his evidence is that he is one of the Members of the District Medical Board. He examined the petitioner on 15.07.2011 and found the following symptoms:

- (1) United fracture of left femur with interlocking nail.
- (2) Osteoporosis of the surrounding bones of left knee and hip.
- (3) Painful and restricted movements of left knee and hip.
- (4) Difficulty to stand on the affected limb.
- (5) Difficulty to squat and cross legged.
- (6) Antalgic gait present.

14) As seen from cross examination part of P.W.1, he did not go to the police station or to the Government Hospital immediately after that accident. He did not go to the Government Hospital for his treatment at any time. He did not inform the Doctors at the first instance when he went to the Doctor that he received injuries in the road accident. He denied that he did not receive injuries in any road accident and the vehicle of the first respondent was not involved in the accident and that to claim the compensation, he filed the petition by managing the police.

15) It is the contention of the petitioner that his report was duly investigated by the police and later police filed charge sheet alleging rash and negligent act against the first respondent and this is sufficient to prove that accident occurred was due to rash and negligent act of the first respondent.

16) Turning to the decision in *T. Lakshmiammal's case (1 supra)*, it has nothing to do with the delay in lodging report. It is a case where there was an application seeking to condone the delay for setting aside the ex parte decree. The said decision has nothing to do with the present situation.

17) Turning to another decision in *Komaravolu Srinivasa Baradwaj's case (MACMA No.2590 of 2012)*, it was a case where there was delay of two days in lodging the report and in the said circumstances, the delay was not viewed with suspicious.

18) The facts in the aforesaid cases are quietly distinguishable to the present case on hand. The accident in question was occurred on 19.08.2005. Admittedly, FIR was lodged on 04.12.2005. There was delay of about more than 3 ½ months in lodging the report. Simply because the police filed charge sheet basing on the report lodged, it does not leads to any conclusion that the contents of the report and charge sheet are correct. It is a case where the insurance company raised a plea that so as to claim compensation the petitioner colluded with the police and managed the police to lay the charge sheet. According to the case of the insurance company, the claim of the petitioner that he sustained injuries in a motor vehicle accident is not tenable.

19) One cannot deny the fact that there are occasions where fake claims are coming up and there are instances where the vehicles

are planted. The Hon'ble Supreme Court also in one decision took serious note of this issue.

20) Hence, at the outset, this Court is of the considered view that simply because the police laid charge sheet, it does not automatically leads to a conclusion about the bonafides of case. Under the circumstances, the conduct of P.W.1 is to be looked into properly. It is a case according to him, the driver of the motorbike, who caused the accident to him, himself took initiative and took him to the Dr. Sanjeevaiah hospital where he was operated. According to him, later he was taken to Pragathi Orthopaedic and General Hospital, Kadapa, where he came to know that operation conducted to him by Dr. Sanjeevaiah was failed. Later, he was taken to NIMS Hospital. As admitted by P.W.1, he did not disclose before Dr. Sanjeevaiah that he received injuries in the motor vehicle accident. Even he did not reveal about the factum of receipt of injuries in the road accident in NIMS Hospital. It is a case where the petitioner was not confined in the hospital from 19.08.2005 till 03.12.2005. On the other hand, the evidence especially prescriptions, dated 17.09.2005 and 19.11.2005 under Ex.A.5 shows that the petitioner was not under the treatment of Pragathi Orthopaedic and General Hospital, Kadapa continuously till the date of report. It is a case where the petitioner was moving freely till the date of lodging report on 04.12.2005. He never bothered to lodge a report with the police.

The petitioner relied upon Ex.A.2 wound certificate. As seen from Ex.A.2 wound certificate, it was said to be prepared by Pragathi Orthopaedic and General Hospital, Kadapa. The contents thereof means that the signatory Dr.I. Ayyavaru Reddy firstly seen the patient on 30.08.2005 at 10.15 p.m. He was alleged to have received the injuries in the vehicle accident on 19.08.2005. This type of information was not furnished by the petitioner before Dr. Sanjeevaiah. Even otherwise, what is distressing to note is that the certificate under Ex.A.2 was dated 05.12.2005, probably, on the next day of lodging the report.

21) It is to be noted that there is no guarantee that the contents of Ex.A.2 were prepared on the day with the petitioner was admitted in the hospital on 30.08.2005. So, the very signing of wound certificate on 05.12.2005, which is on the next day of lodging report, throws any amount of suspicion about its bonafidies. Till 04.12.2005 there was no record at all to show that the petitioner received injuries in the motor vehicle accident. He brought the said fact to the notice of the police on 04.12.2005. Under the guise of wound certificate, dated 05.12.2005, he wanted to bring the fact that he received injuries in the motor vehicle accident on 19.08.2005.

22) It is to be noted that nothing is there even in Ex.A.2, about the particulars of the motor vehicle accident which caused the accident. According to Ex.A.2, the petitioner was accompanied by P.

Rosayya. According to P.W.1, firstly, he was taken to Dr. Sanjeevaiah Hospital by the driver of the offending vehicle. No record was produced from Dr. Sanjeevaiah in the form of a certificate like wound certificate, though the said Dr. Sanjeevaiah attended a surgery. When Dr. Sanjeevaiah was examined as P.W.2, he never spoke of the surgery conducted on P.W.1. On the other hand, his evidence is that he just examined the patient and issued a disability certificate. According to the evidence of P.W.1, the surgery conducted by Dr. Sanjeevaiah was failed and it was found during the treatment in Pragathi Orthopaedic and General Hospital, Kadapa. Thus, all the above facts go to prove any amount of doubt about the bonafidies. The abnormal delay in lodging the report by the petitioner is to be viewed with suspicion and the petitioner by various circumstances destroyed his own case.

23) Having regard to the above, the Tribunal did not believe the case of the petitioner. Simply because the police laid charge sheet it would not enable the Tribunal to assume that the accident was occurred on account of the rash and negligent. The evidence of P.W.1 is to be tested on the touch stone of preponderance of probabilities. If the evidence of P.W.1 tested on the touch stone of preponderance of probabilities, it is not convincing to say that the accident occurred was on account of rash and negligent act of the driver of the offending vehicle. The Tribunal rightly dismissed the

claim. This Court does not find any grounds to interfere with the same.

24) In the result, the MACMA is dismissed, but under the circumstances, without costs.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE A.V. RAVINDRA BABU

Dt.27.03.2024.
PGR

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

MACMA No.1219 of 2016

Date: 27.03.2024

PGR