2023:APHC:11373

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

M.A.C.M.A.No.3769 of 2012

Between**:**

S.Khader Vali, S/o.Md.Abdul Karim,
Muslim, aged about 38 years, Lorry driver,
R/o. I Town, Kurnool, Kurnool District.

… Appellant /Petitioner

And

S.Hameeda Banu, W/o.Maqbul Ahammed,
R/o.D.No.25-3, Ganigalli Street,
Kurnool, Kurnool District,
Owner of lorry bearing No.AP 02 T 1556 and another

… Respondents/Respondents

DATE OF ORDER PRONOUNCED : **18.04.2023**

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE V.GOPALA KRISHNA RAO

1. Whether Reporters of Local Newspapers may be allowed to see the order? : Yes/No

2. Whether the copy of order may be marked to Law Reporters/Journals? : Yes/No

3. Whether His Lordship wish to see the fair copy of the order? : Yes/No

V.GOPALA KRISHNA RAO, J

*** HONOURABLE SRI JUSTICE V.GOPALA KRISHNA RAO**

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! Counsel for Appellant **:** Sri N. Chandrasekhar Reddy

^ Counsel for Respondent No.2 **:** Smt A.Jayanthi

< Gist:

> Head Note:

? Cases referred:

1) 2019 LawSuit (Jhar) 1142

This Court made the following:

THE HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

M.A.C.M.A.No.3769 of 2012

JUDGEMENT:

The appellant is the Claimant in M.V.O.P.No.350 of 2006 on the file of the Motor Accident Claims Tribunal-cum-IV Additional District Judge, Kurnool and the respondents are the respondents in the said case.

2. Both the parties in the appeal will be referred to as they are arrayed in claim application.

3. The claimant filed a Claim Petition under sections 163-A and 166 of Motor Vehicles Act, 1988 against the respondents praying the Tribunal to award an amount of Rs.1,00,000/- towards compensation for the injuries sustained by the petitioner in a Motor Vehicle Accident occurred on 16.02.2005.

4. The brief averments of the claim petition are as follows:

On 16.02.2005, the petitioner, who was the driver of the lorry bearing No.AP 02 T 1556, for which the first respondent was the owner, took a load of liquor from Hyderabad and proceeding

towards Kurnool and when the lorry reached near K.M stone No.189/4 on NH-7 road, at about 5.00 p.m., the petitioner lost his control over the lorry and dashed against the lorry going ahead, which was going with the load of ground nut husk, resulting which the petitioner sustained grievous injuries and the petitioner claimed an amount of Rs.1,00,000/- towards compensation.

5. The first respondent remained exparte. The second respondent filed counter denying the claim application and contended that the claimant is not entitled any compensation and the second respondent is not liable to pay any compensation to the injuries sustained by the petitioner.

6. Based on the above pleadings, the Tribunal framed the following issues:

i. Whether the petitioner sustained injuries in an motor accident that was occurred on 16.02.2005 at about 5.00 a.m. on account of rash and negligent driving of driver i.e., petitioner himself, bearing No.AP 02 T 1556 belongs to first respondent?

ii. Whether the petitioner is entitled to claim compensation? If so, to what amount and from which of the respondents?

iii. To what relief?

7. On behalf of the petitioner, PW1 and PW2 were examined and Ex.A1 to Ex.A7 and Ex.X1 were marked. On behalf of 2nd respondents RW1 was examined and Ex.B1 to Ex.B3 were marked.

8. At the culmination of enquiry, after considering the evidence on record and on appreciation of the same, the Tribunal dismissed the petition.

9. Therefore, being aggrieved by the impugned award, the claimant has preferred the present appeal.

10. Now, the points for consideration are:

1. ***Whether the Order of Tribunal needs any interference?***
2. ***Whether the claimant is entitled for compensation as prayed for?***

11. POINT Nos.1 and 2:-

In order to prove the claim of the petitioner, the petitioner relied on his own evidence as PW1. As per the own case of the petitioner, which is also substantiated by his own evidence as PW1, when he was proceeding with the load of liquor by driving the lorry bearing No.AP 02 T 1556 and while he reached KM stone No.189/4 on NH-7 road at about 5.00 p.m., he lost control over the lorry and dashed against the lorry going ahead with the load of groundnut husk, as a result of which, he sustained multiple injuries. As per his own case, the first respondent is the owner of the lorry, but the first respondent remained exparte.

12. The contention of the second respondent / Insurance Company is that no such accident was occurred on 16.02.2005 and a false story was concocted only to facilitate him to make a false claim for compensation for the injuries sustained by him in some other accident and first respondent colluded with petitioner to make a false claim and so the first respondent remained exparte.

13. The fact that the crime vehicle was insured with second respondent / Insurance Company under a valid policy under Ex.B1 and the same was on force as on the date of occurrence of alleged accident is undisputed. Generally when any accident was occurred involving the vehicle rendered with the policy by the insurance company causing injuries to the inmates of such vehicle including the damage to the vehicle, then such victims are entitled to claim for compensation by fastening the liability both against the owner of the vehicle as well as Insurance company which rendered insurance policy, provided the terms of the policy have not been contravened also to fix the liability against the Insurance Company.

14. The claim made by the PW1 for the bodily injuries sustained by him when the accident occurred by his own rash and negligent act while driving the lorry and so during the course of his employment under first respondent. Even the driver of the vehicle who caused accident by his own fault is also entitled to claim for compensation for the injuries sustained by him under the provisions of Motor Vehicles Act, 1988 as well as Workman's compensation Act, 1923. The petitioner did not choose the forum under

Workman's compensation Act, 1923. But the question in the present case is not for the entitlement of the driver of the alleged offending vehicle i.e., the claim petitioner to make a claim for compensation because of sustaining injuries during the course of his employment, but the very factum of accident is challenged by the Insurance company by denying its liability.

15. The contention of the second respondent/ Insurance Company is that no such accident was occurred and vehicle bearing No.AP 02 T 1556 is not involved in the accident. Therefore, it is incumbent upon the claim petitioner to prove the factum of accident by adducing sufficient evidence. After occurrence of accident generally a crime will be registered, on receipt of any information by police, under whose jurisdiction such accident was occurred by issuing the First Information Report and later, the concerned crime vehicle driver will be prosecuted by filing a charge sheet. But in the present case, for the reasons best known to the claimant, no First Information Report was filed and no charge sheet was filed. It is not the case of the claimant that a crime was registered against him and charge sheet is also filed against him after duly completion of

investigation by the investigating officer. As per the own admission of the claim petitioner, the accident was occurred because of his own rash and negligent driving, but no such case was registered against him. The manner of the accident is disputed by the Insurance Company. None of the witnesses for the occurrence of alleged accident was examined to elicit the circumstances for causing of the occurrence of accident. No doubt the claim petitioner produced wound certificate under Ex.A2 to reveal the fact of his admission into the Government General Hospital on 17.02.2005 at 10.00 a.m. with the injuries sustained in the road accident. The contention of the second respondent / Insurance Company is that the petitioner has not at all sustained with any kind of injuries in any accident. But it has been contended that the accident was not occurred as in the manner he elicited and he made a false claim involving the vehicle bearing No.AP 02 T 1556. Therefore, the petitioner shall prove the occurrence of accident by producing cogent evidence but not by mere producing a panchanama under Ex.A1. Ex.A6 fine receipt filed by the petitioner proves that the petitioner paid fine for an amount of Rs.300/- to the Circle Inspector of Police, Alampur for violation of traffic Rules under Section 184 of

Motor Vehicles Act. Admittedly no cogent evidence is produced by the petitioner to prove the manner of the accident in which he alleged to be sustained injuries. The petitioner filed the claim application under Sections 163-A and 166 of Motor Vehicles Act, 1988. Though it is not necessary to prove that the said accident was occurred because of either the rash or negligent driving of the driver as required under Section 166 of Motor Vehicles Act, 1988, still the petitioner shall prove that he caused the accident by driving the lorry bearing No.AP 02 T 1556 because of his fault, in order to make a claim under Section 163-A of Motor Vehicles Act, 1988, for which there is no cogent evidence and the petitioner failed to prove the manner of the alleged accident. Therefore, the petitioner is not entitled any compensation even under Section 163-A of Motor Vehicles Act and also he cannot make any claim under Section 166 of Motor Vehicles Act as it is the self-accident which he could not prove.

16. The learned counsel for the appellant relied on a decision in **Oriental Insurance company Limited vs. Renu Mishra and others[1].** In that decision it was held:

> "Power conferred to Tribunal under Section 168 of the Motor Vehicles Act is an independent power whereby the Tribunal has been required to hold an inquiry with regard to accident and award compensation. This should be done after providing opportunity of hearing to both parties. Even where no first information report is lodged, the Tribunal has ample power to hold an inquiry and admit or reject the claim petition keeping in view the evidence on record".

Here in the instant case, admittedly during the course of enquiry, no cogent evidence was produced by the claimant and none of the witnesses were examined by the claimant to prove the manner of the accident. As per the own case of the petitioner, he sustained bodily injuries, when the accident occurred by his own rash and negligent act while driving the alleged lorry bearing No.AP 02 T 1556 during the course of his employment under the first respondent. The first respondent did not enter into the witness box. In order to prove the contention of the claim petitioner no other witnesses were examined except the medical officer, who treated him as PW2. Therefore, the facts and circumstances cited in the decision are different to the instant case. In view of the above

[1] 2019 LawSuit (Jhar) 1142

observations, there is no illegality in the order passed by the learned Tribunal and the claimant is not entitled any compensation. Accordingly, the appeal is to be dismissed.

17. In the result, the appeal is dismissed. There shall be no order as to costs.

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

V.GOPALA KRISHNA RAO, J

Dated: 18.04.2023.

Note: L.R.copy to be marked
b/o.
sj

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HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

M.A.C.M.A.No.3769 of 2012

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