

+ M.A.C.M.A.No.62 OF 2012

% 25-01-2024

E. Mutyalu and others

...Petitioners

Vs

K. Ratnavathi and others

.... Respondents

! Counsel for the petitioner : Sri S. Chandraiah

Counsel for the Respondent No.3 : P. Satya Manjula

<Gist :

>Head Note:

? Cases referred:

1. (2018) SCC 1
2. 2019 ACJ 1
3. 2020 ACJ 2148
4. (2011) 3 SCC 646

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

* * * *

M.A.C.M.A.No.62 OF 2012

Between:

E. Mutyalu and others

...Petitioners

And

K. Ratnavathi and others

... Respondents

ORDER PRONOUNCED ON: 25.01.2024

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes

NAMAVARAPU RAJESHWAR RAO, J

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**M.A.C.M.A.No.62 OF 2012****JUDGMENT:**

This MACMA is filed under Section 173 of the Motor Vehicles Act, 1988 by the appellants/petitioners aggrieved by the order and decree dated 28.09.2011 passed in M.V.O.P.No.1202 of 2006 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District (for short, "the Tribunal").

2. For convenience, the parties will be hereinafter referred to as they are arrayed before the Tribunal.

3. Brief facts of the case are that the petitioners filed a claim petition claiming compensation of Rs.15,00,000/- on account of the death of E. Sathaiah (hereinafter referred to as "the deceased") in a motor vehicle accident.

3(1) It is stated that on 10.05.2006, the first petitioner and her husband/deceased visited Raghunatha Puram and from there Gourapally village for attending function and while coming so in the Auto bearing No.AP-28W-1823 of respondents No.1 and 2, the driver of the said auto drove it in a rash and negligent manner and got turtle in the outskirts of Kurram

village at about 7.15 p.m. The deceased sustained injuries to his head and abdomen, as there was a known person to the deceased by name J. Harinath Reddy of Gouapally, the deceased was taken to Gandhi Hospital, Musheerabad. He underwent treatment for about five days in the said Hospital, and later, he succumbed to the injuries. On the death of her husband, the first petitioner reported to the police of Rajapet, and registered the same as a case in Cr.No.28 of 2006 under Section 304-A of I.P.C.

The auto driver on commission of the offence, escaped from the scene of offence without taking the injured or without reporting to the police. Later, the second respondent did not ply his auto till registering the case. After a thorough investigation, while checking the autos on the route, i.e. passengers auto, then the culprit's details came out. Thus, the investigation of the police reveals it is the auto No.AP-28W-1283 in which the injured were travelling, was turned turtle due to rash and negligent driving of the driver of the said Auto. The driver's name is also known as Walmiki Sathbeer Singh. Hence, the claim petition.

4. Respondents No.1 and 2 remained ex parte before the Tribunal. Respondent No.3/Insurance Company filed a

counter denying the accident, as well as, mode of accident, and the alleged injury sustained by the deceased and his death connecting the alleged accident. It is stated that the petitioners in collusion with first respondent filed this false claim. On the report given by one Mutyalamma, FIR was lodged on 14.05.2006, as per which, at about 7.00 p.m. on 10.05.2006 at Kurram "X" roads, they boarded into an auto and they overlooked the auto number. Therefore, the Rajapeta police registered the case in Cr.No.28 of 2006 against an unknown auto as the auto turned turtle and the deceased died while undergoing treatment. But, later, the auto bearing No.AP-28W-1823 was implicated. They further pleaded that the auto driver Sathbeer Singh was not having valid license on the date of the accident and he was not competent to drive non-transport vehicle. They further pleaded that auto bearing No.AP-28W-1823 was not involved in the accident as alleged by the petitioners and it was hit and run case. So, this auto was falsely implicated by the petitioners in collusion with Police officials to have wrongful gain. Four days after the accident, the report was given and police registered the case about two months after the accident, with a view to help the petitioners. In the report given by the 1st petitioner, she narrated that they travelled in an unknown auto and also

narrated that she did not note down the auto number in which they travelled. The police, without proper investigation, falsely implicated the driver of the auto bearing No.AP-28W-1823, though the said auto was not involved in the alleged accident. Accordingly, prayed to dismiss the petition.

5. On behalf of the petitioners, PWs.1 to 5 were examined and got marked Exs.A1 to A9. On behalf of respondent No.3, RW.1 was examined and marked Exs.B1 to B9.

6. On appreciating the material available on record, the Tribunal dismissed the petition. Aggrieved by the same, the present appeal is filed by the appellants/petitioners.

7. Learned counsel appearing for the petitioners *inter-alia* contended that there is a charge-sheet against the driver of the auto bearing No.AP-28W-1823, and he was examined. The Sub-Inspector of Police was also examined by tendering the crime documents filed by the petitioner No.1 and their evidence was not shaken. He further contended that the Tribunal failed to appreciate the evidence of the petitioners and also not considered the public documents. He relied upon the following judgments:

- i) In the case of ***Naveen Kumar Vs. Vijay Kumar and others***¹
 - ii) In the case of ***Prakash Chand Daga Vs. Saveta Sharma and others***²
 - iii) In the case of ***Jumani Begam Vs. Ram Narayan and others***³
- Accordingly, prayed to allow the appeal.

iv) In the case of ***Kusum Lata and others Vs. Satbir and others***⁴

8. Per contra, learned counsel appearing for respondent No.3 contended that the order under challenge suffers no infirmity and, as such, no interference of this Court is required. Thus, prayed to dismiss the appeal.

9. Heard both sides. Perused the record.

10. As seen from the impugned order, the Tribunal observed that as per the evidence of PW.1, immediately after the accident, with the help of one Harinatha Reddy-PW.2, the deceased was shifted to Gandhi Hospital. As per the evidence of PW.2, he deposed that on 10.05.2006, the first petitioner came and approached him at 7.30 p.m. saying that her husband was injured in the accident at Kurram "X" roads, which is near to their village; as such, he shifted the said

¹ (2018) SCC 1

² 2019 ACJ 1

³ 2020 ACJ 2148

⁴ (2011) 3 SCC 646

Sathaiah (deceased) to Gandhi Hospital for treatment in his car and the same is reported to the police Rajapet and the police recorded his statement. In the cross-examination, PW.2 categorically admitted that he attended to Sathaiah (deceased) immediately after the accident, and there he found the Auto. He did not depose about the availability of the driver of the Auto or the registration number of the Auto. If auto was available there, certainly, its number would have been noted by PW.2 though not by PW.1; and this PW.2 would have deposed the auto number.

11. The Tribunal further observed that in the later part of chief examination of PW.2, he deposed that the police Rajapet recorded his statement the next day, and then he found the Auto in the police station. Thus, on the next day of the accident itself, this PW.2 was examined, and as per his own version, he saw the Auto in the Police Station. Thus, as per the evidence of PW.2, even well before giving report to the police, it was seized by the police. So, the police were much aware of what is the Auto number involved in the accident. Ex.A1, report was given by PW.1 to the police on 14.05.2006, i.e. about four days after the incident.

12. The Tribunal further observed that the injured was admitted in Gandhi Hospital. It is not a private Hospital, so if actually, the said Sathaiah (deceased) was involved in the accident and sustained such grievous injuries and later succumbed to injuries, certainly the Hospital authorities would make necessary report to the Police as a Medico Legal case. Similarly, the police will also take cognizance of it immediately upon admission of said Sathaiah (deceased) in the Hospital. As per the evidence of PW.1 and Ex.P1, the said Sathaiah (deceased) died while undergoing treatment in the said Gandhi Hospital due to the injuries alleged to have been sustained in the said accident. If that aspect is correct, certainly, as it is a medico-legal case, Gandhi Hospital authorities would report the death of Sathaiah to the police under the head of the medico-legal case and the police would take action. That is also not taken place.

13. The Tribunal further observed that in the light of the evidence of PW.2, his statement was recorded on the next day of incident at the police station, where he noticed an auto, and then furnished the number of the Auto. Though PW.2 actively participated in the matter by taking care of admitting Sathaiah (deceased) and his wife to the Hospital he did not

make any effort to give a report to the police. He had all the occasion to know the number of the auto because he saw the auto at the scene of the offence immediately after the accident. So, the non-giving of any report by PW.1 or PW.2 about the accident immediately after the accident goes a long way. As per the evidence of PW.2, on the following day, his statement was recorded by the police in the police station and then he noticed an auto there. At this juncture, PW.2 also had not given any report. The auto number was very much known not only to PW.2 but also to the police. However, the police have not registered the FIR against that auto which was very much available in the police station and Ex.A1-FIR was registered against an unknown auto driver.

14. The Tribunal further observed that PW.3-Sub Inspector of Police, Rajapet Police Station, deposed that Ex.A1-FIR was registered against an unknown auto driver and also deposed about the appearance of one Erra Nagender Reddy before Rajapet Police Station, and gave a statement that his auto was involved in the accident. He further deposed that the said Erra Nagender Reddy produced the driver of the said auto before the police station and then, PW.3 remanded the said driver. As per Ex.A3-remand case diary, it reveals that on

21.06.2006 Erra Nagender Reddy, owner of the auto bearing No.AP-28W-1823 came to the Police Station with an auto and alleged to have admitted the involvement of that auto in the accident. The Tribunal further observes that PW.3 categorically admitted that as per the M.V. Inspector report/Ex.A4 dt.11.07.2006, the owner of the Auto is K. Rathnavathi, i.e. respondent No.1 herein. Thus, as per the version of PW.3 and contents of Ex.A3-remand case diary, Erra Nagender Reddy is the owner of the Auto, proved to be incorrect. As per the case of the petitioners also, the said Erra Nagender Reddy is not the owner. PW.3, in the later part of cross-examination, categorically admitted that as per C-Book and other documents, the owner of the vehicle is not Erra Nagender Reddy. So, it postulates Erra Nagender Reddy is not the owner. So, it all falsifies the remand report contents under Ex.A3 that on 31.06.2006, Erra Nagender Reddy came and admitted that his auto involved in the accident. As per the evidence of PW.3 and as per contents of Ex.A3-remand report, on 12.07.2006 at about 8.30 p.m., the said Erra Nagender Reddy produced Walmiki Sathbeer Singh (PW-5) stating that he is the driver of the said auto at the time of the accident. Thus, about two months after the alleged accident, only on production of the said Sathbeer Singh by the alleged owner of

Erra Nagender Reddy, the police alleged to have come to know that Sathbeer Singh was the driver of the auto at the time of the incident. But, when the said Erra Nagender Reddy appeared and produced auto bearing No.AP-28W-1823, there is no reference from him as to who is the driver of the auto and he has not deposed that the said Sathbeer Singh was the auto driver at the time of the accident. Thus, as admitted by PW.3, merely relying the statement of Erra Nagender Reddy, the Sub Inspector of Police filed a charge-sheet. Hence, the charge-sheet, Ex.A5 will not help the petitioners in any way.

15. The Tribunal further observed that Ex.B1 is the statement of PW.1. In this also, it is not stated by her that the auto was left out at that place and driver ran away as described in the petition. PW.2 is the brother of the deceased who, as per his statement under Ex.B2, on coming to know of the accident and admitting his brother to the said Gandhi Hospital, he rushed to the spot. He was also not able to give the number of the auto. Ex.B3 and Ex.B4 are statements of sons of PW.1 and deceased. They also did not state in their statements the auto number and who the driver was. Ex.B5 is the statement of Harinatha Reddy (PW.2). In Ex.B5 also, PW.2 categorically stated that he saw the auto at the scene of offence

when he went to the scene immediately after the accident. As per the evidence of PW.5, his statement was recorded on the day after the accident which is evident from Ex.B5. Ex.B7 is the statement of Md. Istak, who alleged to have attended the repairs of the auto. Ex.B8 is the statement of said Erra Nagender Reddy, who is said to be the owner of the auto. As per his version, on the date of the accident at 11.00 p.m., the driver of the auto brought the Auto, and he noticed damages to the said Auto. He (Erra Nagender Reddy) got the Auto repaired with Md. Istak as per Ex.B7, and on 21.06.2006, on his own accord, he came to the police station and gave a statement and came forward to show where he got repaired the auto. This statement under Ex.B8 did not disclose that he handed over the auto on that day i.e. on 21.06.2006; likewise, it did not disclose that he produced any document to show that he is the owner of the auto. Thus, Ex.B8 falsifies the entire story of the police connecting this auto and the driver thereof. Hence, the version of the police that on 21.06.2006, this Erra Nagender Reddy brought the auto to the police station proved to be incorrect.

16. The Tribunal further observed that PW.5 categorically stated that after the Police took him to the police

station, E. Nagender Reddy, on coming to know of it, came to the police station. He also stated that E. Nagender Reddy had not got surrendered him to the police. So, the entire version of the police that this auto was involved in the accident and PW.5 was the auto driver proved to be false. PW.5 further deposed that he did not know as to who is the owner of the crime vehicle and he had not seen the documents relating to the vehicle. The petitioners to make out the accident involving this auto connecting to the accused, are relying on this police record, but that police record is proved to be incorrect by the version of witnesses, more in particular, the evidence of PW.5, PW.3 and PW.1. As per the evidence of PWs 2 and 3 and Ex.B9-insurance policy copy, and Ex.A4-M.V.I. report and Ex.A5-charge-sheet shows that respondent No.1 is the owner of the said auto. In view of the above reasons, it can safely be concluded that the petitioners failed to prove that this auto bearing No.AP-28W-1823 is involved in the accident, and PW.5 is the driver of the auto, and the accident occurred due to a rash and negligent act connecting that auto.

17. Learned counsel for the appellants relied upon in the case of **Naveen Kumar's case** (1st supra) and **Prakash Chand Daga** (2nd supra), wherein it was observed that the

registered owner is liable to pay the compensation. In the case on hand, the petitioners failed to prove that the auto bearing No.AP-28W-1823 itself is involved in the accident, the question of directing the registered owner for payment of compensation does not arise. As such, the said cases do not apply to the present facts.

18. Learned counsel for the appellants relied upon in the case of **Jumani Begam** (3rd supra), wherein the Hon'ble Apex Court set aside the findings of the Courts below with regard to contributory negligence. But, in the case on hand, there is no contributory negligence, as such, the said case is not applicable to present set of facts.

19. Learned counsel for the appellants relied upon in the case of **Kusum Lata** (4th supra) the Hon'ble Apex Court held as follows:

“It is but natural for a relative under traumatic condition of giving immediate medical aid to victim not to be conscious enough of the presence of any person in vicinity and the Courts below were wrong in holding that if name of witness is not mentioned in FIR, it was not possible for him to have witnessed the incident and reiterated that in a case relating to motor accident compensation claims, claimants are not required to

prove the case as it is required to be done in a criminal trial.

Both the Tribunal and the High Court have refused to accept the presence of Dheeraj Kumar as his name was not disclosed in the FIR by the brother of the victim.

8. This Court is unable to appreciate the aforesaid approach of the Tribunal and the High Court. This Court is of the opinion that when a person is seeing that his brother, being knocked down by a speeding vehicle, was suffering in pain and was in need of immediate medical attention, that person is obviously under a traumatic condition. His first attempt will be to take his brother to a hospital or to a doctor. It is but natural for such a person not to be conscious of the presence of any person in the vicinity especially when Dheeraj did not stop at the spot after the accident and gave a chase to the offending vehicle. Under such mental strain if the brother of the victim forgot to take down the number of the offending vehicle it was also not unnatural.

9. There is no reason why the Tribunal and the High Court would ignore the otherwise reliable evidence of Dheeraj Kumar. In fact, no cogent reason has been assigned either by the Tribunal or by the High Court for discarding the evidence of Dheeraj Kumar. The so-called reason that as the name of Dheeraj Kumar was not mentioned in the FIR, so it was not possible for Dheeraj Kumar to see the incident, is not a proper assessment of the fact-situation in this case. It is well known that in a case relating to motor accident claims,

the claimants are not required to prove the case as it is required to be done in a criminal trial.”

20. In the instant case, as stated supra, the entire issue as to the manner of accident and involvement of the Auto itself is a doubtful. As per the evidence of PW.1, immediately after the accident, with the help of one Harinatha Reddy-PW.2, the deceased was shifted to Gandhi Hospital. As per the evidence of PW.2, he deposed that on 10.05.2006, the first petitioner came and approached him at 7.30 p.m. saying that her husband was injured in the accident at Kurram “X” roads, which is near to their village; as such, he shifted the said Sathaiah (deceased) to Gandhi Hospital for treatment in his car and the same is reported to the police Rajapet and the police recorded his statement. In the cross-examination, PW.2 categorically admitted that he attended to Sathaiah (deceased) immediately after the accident, and there he found the Auto. He did not depose about the availability of the driver of the Auto or the registration number of the Auto. If auto was available there, certainly, its number would have been noted by PW.2 though not by PW.1; and this PW.2 would have deposed the auto number. As per the evidence of RW.3 also, the said Auto was not involved in the accident.

21. The Tribunal further observed that the injured was admitted to Gandhi Hospital. It is not a private Hospital, so if actually said Sathaiah (deceased) was involved in the accident and sustained such grievous injuries and later succumbed to injuries, certainly the Hospital authorities would make a necessary report to the Police as a Medico-Legal case. In the same fashion, the police also will take cognizance of it immediately on admission of said Sathaiah (deceased) in the Hospital. As per the evidence of PW.1 and Ex.P1, the said Sathaiah (deceased) died while undergoing treatment in the said Gandhi Hospital due to the injuries alleged to have been sustained in the said accident. If that aspect is correct, certainly, as it is a medico-legal case, Gandhi Hospital authorities would report about the death of Sathaiah to the police under the head of medico-legal case, and the police would take action. That is also not taken place. In view of the same, the petitioners are also not entitled for compensation under the head 'hit and run.' Hence, the facts stated in the above decision are different to that of the case on hand.

22. After perusing the entire evidence on record, this Court is also in view that the above facts are cooked up story for wrongful gain. The Tribunal has meticulously discussed the

material evidence available on record and rightly dismissed the claim petition, which needs no interference from this Court. As such, the M.A.C.M.A. is liable to be dismissed.

23. Accordingly, the M.A.C.M.A. is dismissed by confirming the Award dt.28.09.2011 in M.V.O.P.No.1202 of 2006 passed by the Tribunal. There shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

25th day of January, 2024
BDR