(2015) 01 AP CK 0013

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 646 of 2009

National Insurance Company Limited — APPELLANT

Vs

Mandiga Krishna and Others — RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 158(6), 166

Citation : (2015) 3 ACC 134 : (2015) 2 AnWR 792

Hon'ble Judges : U. Durga Prasad Rao, J.

Bench : Single Bench

Advocate : Agasthya Sarma, for the Appellant; V. Tulasi Reddy, Advocates for the Respondent

Final Decision : Dismissed

Judgement

U. Durga Prasad Rao, J.—Aggrieved by the Award dated 06.07.2006 in O.P. No. 571 of 2002 passed by the Chairman, M.A.C.T-cum-District Judge, Nizamabad (for short the Tribunal), the 2nd respondent in the O.P/National Insurance Company Limited preferred the instant MACMA.

2a. On factual side, on 21.04.2002 at about 1:45 p.m., when the claimant was travelling in the lorry bearing No. AP 9 T 5455 as labourer from Nizampet to Nanded and when it reached Narsingraopally cross road, the driver of the lorry drove at high speed and in a rash and negligent manner and dashed another lorry which was coming from opposite direction. In the resultant accident, the claimant sustained lacerated injuries on fore head, both thighs and injuries on back, left side and back side of chest and upper arm. It is averred that the accident was occurred due to the fault of driver of the lorry bearing No. AP 9 T 5455. With these averments, the claimant filed O.P. No. 571 of 2002 under Section 166 of Motor Vehicles Act, 1988 against respondents 1 and 2, who are owner and insurer of the offending lorry and claimed Rs. 1,50,000/- as compensation.

b) Respondent No. 1 remained ex parte.

c) Respondent No. 2/Insurance Company filed counter denying all the material averments made in the petition and urged to put the claimant in strict proof of the same. R. 2 further denied the age, avocation and income of the claimant. It further denied that the driver of the lorry bearing No. AP 9 T 5455 had valid and effective driving licence and was authorised to drive the lorry. Finally R. 2 contended that the compensation claimed is highly excessive and thus prayed to dismiss the O.P.

d) During trial, P.W. 1 was examined and Exs. A1 to A8 were marked on behalf of claimant. R.W. 1 was examined and Exs. B. 1 and B. 2 were marked on behalf of 2nd respondent.

e) The Tribunal on appreciation of both oral and documentary evidence on record, has awarded total compensation of Rs. 22,020/- with costs and interest at 7.5% p.a. under different heads as follows:

Hence, the appeal by Insurance Company.

3. The parties in this appeal are referred as they stood before the Tribunal.

4. Heard arguments of Sri Agasthya Sarma, learned counsel for appellant/ Insurance Company, Sri V. Tulasi Reddy, learned counsel for respondent No. 1/ claimant and Sri P. Amarender Reddy, learned counsel for respondent No. 2.

5. Challenging the award, learned counsel for appellant made an interesting argument. His grievance is not in respect of quantum of compensation but on the issue about the involvement of the lorry bearing No. AP 9 T 5455 in the accident. His argument is that the lorry bearing No. AP 9 T 5455 was in fact not involved in the accident but some other lorry, probably lorry bearing No. AP 9 T 5485 was involved in the accident and in fact the said number was initially mentioned in Ex. A. 1 FIR but some how during the course of investigation, said number was corrected and mentioned as lorry bearing No. AP 9 T 5455 and correction of 8 as 5 is clearly discernible in Ex. A. 1.

a) His further submission is that as per Ex. A. 1, the accident was occurred at about 1:45 pm on 21.04.2002 and FIR was also lodged within short time thereafter but neither the owner nor the police informed this fact to the insurer. He submitted that under Section 158(6) of M.V. Act a duty is cast on police as well insurer to submit the information relating to the accident to the Claims Tribunal having jurisdiction to try the said case and also to the insurer. In the instant case, since neither the police nor insured furnished particulars of the accident to the insurer immediately after registration of the FIR, the Insurance Company lost a valuable opportunity to engage its surveyor to investigate the fact whether the lorry bearing No. AP 9 T 5455 was indeed involved in the accident or not. Due to lack of in time information, the Insurance Company was deprived of that opportunity and now it is made liable to pay compensation. If information relating to accident is furnished to the insurer in time, there will be another advantage to it to negotiate with the victim and pay the agreed compensation in time and thereby avoid payment of heavy interest. He thus on one hand prayed to allow the appeal on the ground that the insured vehicle was not involved in the accident and on the other hand prayed to give a direction to the police and insurer to discharge their obligation under Section 158(6) of M.V. Act.

6. Per contra, learned counsel for 1st respondent/claimant argued that the vehicle bearing No. AP 9 T 5455 was very much involved in the accident and in FIR its number was mentioned as lorry bearing No. AP 9 T 5485 by mistake and the said mistake was immediately rectified and thereafter in all the subsequent records, the correct number of the vehicle was mentioned without any corrections but the insurer is now trying to create mountain out of molehill by projecting the correction in FIR and hence the appeal may be dismissed. He reported no objection for giving direction to the police.

7. In the light of above arguments, the point for determination in this appeal is:

Whether there are merits in this appeal to allow? 8. POINT: So far as involvement of the lorry bearing No. AP 9 T 5455 in the accident is concerned, as per the pleadings in the OP, it is a firm case of a complainant that when he was travelling in the lorry bearing No. AP 9 T 5455, the driver drove the vehicle in a rash and negligent manner and dashed the opposite coming lorry bearing No. HR 38 D 7730 and caused the accident. In evidence also he deposed in the same manner. Then coming to Ex. A. 1 FIR, it was lodged by one Vittal Goud, Sarpanch of Narsingraopally village. In his report he mentioned the crime vehicle number as AP 9 T 5485 and later the said number was corrected as AP 9 T 5455. Be that it may, in Ex. A. 3 charge sheet, Ex. A. 6 scene of offence panchanama and in Ex. A. 7 the 161 Cr.P.C. statement of Sarpanch, the number of the crime vehicle is consistently mentioned as AP 9 BT 5455 and there were no corrections in those documents. Thus it would appear that the correction made in Ex. A. 1 with regard to the crime lorry number seems to be due to initial wrong mentioning of the vehicle number. Except harping that the vehicle bearing No. AP 9 T 5455 was not involved in the accident, the Insurance Company has not produced any cogent evidence in proof of its contention. Of course the reason given is that since it was not informed of the accident at the earliest opportune time, it could not engage a surveyor to investigate into that aspect. Be that it may, the Tribunal basing on the other documents which reveal the number of vehicle as AP 9 T 5455 confirmed that the said vehicle was indeed involved in the accident and negatived the contention of the insurer. I find no illegality or irregularity in the said finding. As already observed, there is no other evidence on record to hold that crime vehicle was not involved in the accident. Hence I find no merits in the appeal.

9. However, that is not the end of the matter. I find truth in the submission of learned counsel for appellant that the police and insurer are not discharging their duties as laid down under Section 158(6) of M.V. Act. This Court directed the

Registrar (Judicial) to obtain information from all the Principal District Judges as to whether they are receiving intimation under Section 158(6) of M.V. Act from all the police stations within their respective jurisdictions and the information submitted by Registrar (Judicial) is baffling. Except one or two districts, none others are receiving information from the Police regarding the accident particulars after registration of FIR. This speaks volumes of apathy and utter disdain towards the duty ordained by the law and also Supreme Court in its judgment in Jai Prakash vs. National Insurance Company Limited and others. In the said judgment Apex Court gave the following directions to the police authorities.

Para 8: The Director General of Police of each State is directed to instruct all Police Stations in his State to comply with the provisions of Section 158(6) of the Act. For this purpose, the following steps will have to be taken by the Station House Officers of the jurisdictional police stations:

(i) Accident Information Report in Form No. 54 of the Central Motor Vehicle Rules, 1989 (''AIR'' for short) shall be submitted by the police (Station House Officer) to the jurisdictional Motor Vehicle Claims Tribunal, within 30 days of the registration of the FIR. In addition to the particulars required to be furnished in Form No. 54, the police should also collect and furnish the following additional particulars in the AIR to the Tribunal: (i) The age of the victims at the time of accident; (ii) The income of the victim; (iii) The names and ages of the dependent family members.

(ii) The AIR shall be accompanied by the attested copies of the FIR, site sketch/ mahazar/photographs of the place of occurrence, driving licence of the driver, insurance policy (and if necessary, fitness certificate) of the vehicle and postmortem report (in case of death) or the Injury/Wound certificate (in the case of injuries). The names/addresses of injured or dependant family members of the deceased should also be furnished to the Tribunal.

(iii) Simultaneously, copy of the AIR with annexures thereto shall be furnished to the concerned insurance company to enable the Insurer to process the claim.

(iv) The police shall notify the first date of hearing fixed by the Tribunal to the victim (injured) or the family of the victim (in case of death) and the driver, owner and insurer. If so directed by the Tribunal, the police may secure their presence on the first date of hearing.

It is very painful to observe the scant respect for the judgment of Apex Court and lack of humane touch towards victim of accident.

10. Therefore, for proper implementation of the directions given by the Hon''ble Apex Court, I am inclined to supplement the following further direction:

The Judicial First Class Magistrates are directed to accept the charge sheets concerning to motor vehicle accidents that will be occurring from 01.03.2015, only if the concerned police encloses a certificate issued by the jurisdictional

Motor Accidents Claims Tribunal (Principal District Court) certifying that the police have complied with the provisions of Section 158(6) of M.V. Act in that case. Only in exceptional cases the Judicial First Class Magistrates may accept the charge sheet without such certificate. Upon receiving the information under Section 158(6) of M.V. Act, the Motor Accidents Claims Tribunals shall scrupulously follow the direction of Apex Court in Jai Prakash Vs. National Insurance Co. Ltd. and Others, . 11. With the above direction, this MACMA is dismissed. No costs in the appeal.

The Registrar (Judicial) is directed to furnish copy of this judgment to all Principal District Courts.

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