

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

M.A.C.M.A.No.123 of 2006

JUDGMENT:

Aggrieved by the order dated 08.07.2005 in M.V.O.P.No.592 of 2000 on the file of Chairman, Motor Accidents Claims Tribunal –cum- VII Additional District Judge (Fast Track Court), Nizamabad at Bodhan, whereby and whereunder the claim of Rs.2.00 lakhs laid by the petitioner, under Section 166 of the Motor Vehicles Act, 1988 read with Rule 455 of the A. P. Motor Vehicles Rules, 1989, was dismissed, the petitioner preferred the instant appeal seeking to set aside the dismissal order and decree, and to grant compensation for the injuries he sustained in a road accident.

For convenience sake, the parties hereinafter referred to as they were arrayed before the Tribunal in the O.P.

Turning to the facts, the petitioner was proceeding from Bodhan to Shakkarnagar, on 02.02.2000 at 9.00 p.m., during which time, the Hero-Honda motor cycle, belonging to the first respondent, came in a rash and negligent manner and dashed him due to which he fell down and received fracture to his neck femur, injuries to his both hands, fracture to his right leg. He was shifted to Government Hospital, Bodhan, where he was given first aid. He states that he was shifted to Pragathi Hospital, Nizamabad, where he was treated as inpatient and discharged on 14.02.2000. He incurred expenditure of Rs.45,000/- towards medical expenses and, therefore, sought the aforesaid amount from respondent Nos.1 and 2, who are the owner and insurer of the Hero-Honda motor cycle respectively.

First respondent remained ex parte. The second respondent – Insurance Company filed written statement opposing the claim and seeking dismissal of the same by raising various pleas denying the very involvement of the accident vehicle and the petitioner sustaining injuries in the road accident.

The Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as PW.1, and Dr.L.Ramulu as PW.2, and marked Exs.A.1 to A.9. On behalf of the second respondent, no witnesses were examined but a copy of the Insurance policy was marked as

Ex.B.1.

The Tribunal has taken issue Nos.1 and 2 together for common discussion but, dismissed the claim on the grounds, first, that the petitioner has not chosen to file wound certificate or extract of accident register from the Government Hospital, Bodhan, where he claims that he was given first-aid; second, the doctor, who was examined as PW.2, admits, in his cross-examination, that he did not enquire PW.1 as to how he sustained injuries and expressed opinion that the injuries are possible by a fall; third, PW.2, as per his evidence, despite working as a Civil Assistant Surgeon, Government Hospital, Nizamabad, at the relevant time, did not bring case sheet evidencing that he treated PW.1 for the injuries he sustained in a road accident; fourth, the complaint was not lodged immediately, and there was delay of more than ten days and the reasons were not assigned for the inordinate delay; and fifth, copies of the decisions, rendered in A.A.O.No.3518 of 2004 and CMA.No.3004 of 2004 and cross objections on the file of this Court, were circulated to the said Court, in view of which, no credence could be given to the evidence of PW.2 and, thereby, dismissed the claim petition.

It is the aforesaid order which is under challenge in the instant appeal contending in the grounds, that the Tribunal did not properly appreciate the evidence on record and the reasons assigned by the Tribunal in dismissing the claim are without any basis and cannot be construed as findings. It is also stated that the evidence of PW.2 ought not to have brushed aside by the Tribunal despite the fact that the petitioner sustained fractures to his right leg and multiple and grievous injuries all over his person and, therefore, sought to set aside the order passed by the Tribunal, and grant compensation of Rs.2.00 lakhs for the injuries sustained by the petitioner – appellant.

Heard Sri M.Rajamalla Reddy, learned counsel for the appellant. Despite service of notice on respondent Nos. 1 and 2, owner of Hero Honda motor cycle, Sri Moin Pasha, and the insurer, New India Assurance Company Limited, none appears for them. However, in their absence, the appeal is taken up for disposal on merits.

The reasons assigned by the Tribunal in dismissing the claim petition cannot be faulted with. Admittedly, Ex.A.1, the certified copy of F.I.R., does not disclose

as to the reasons in explaining the delay in lodging the complaint with the police concerned, though, there was inordinate delay of ten days in lodging the complaint and, even no convincing reasons are assigned by the petitioner in his evidence as to why the delay has occurred; second, the evidence of PW.2 is of no assistance to prove that the petitioner sustained injuries in a road accident since PW.2 himself admitted that he did not enquire PW.1 as to how he sustained injuries; third, even Ex.A.4, discharge card of Pragathi Hospital, Nizamabad, and Ex.A.5, Registration card of Pragathi Hospital, Nizamabad, do not indicate that the petitioner sustained injuries in a road accident which was admitted by PW.2; fourth, though, it is the definite case of the petitioner that he was immediately taken to Government Hospital, Bodhan, and was given first aid and, thereafter only, he got himself admitted in Pragathi Hospital, Nizamabad, still, not chosen to file the wound certificate, if any, issued by the Government Hospital, Bodhan, nor the petitioner has chosen to secure the extract of accident register from Government Hospital, Bodhan, to prove that he was really treated there and given first aid immediately after the accident and the very fact that they are not forthcoming gives rise to inescapable inference that the petitioner has not received any injuries in a road accident as projected by him; and fifth, PW.2, who is the medical officer, according to his own admission, in his cross-examination, that he was working as a Civil Assistant Surgeon at Nizamabad Government Hospital, did not bring even the case sheet to prove that the petitioner sustained injuries in a road accident. Thus, the cumulative effect of all these circumstances is that the petitioner is unable to prove that he sustained injuries in a road accident. Therefore, the Tribunal rightly concluded that the petitioner failed to prove that he sustained injuries in a road accident. Hence the dismissal of claim petition by the Tribunal cannot be construed as perverse warranting any interference. Therefore, confirming the order of the Tribunal, the Appeal is dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand disposed of.

A.SHANKAR NARAYANA,J

Date: 25.03.2015

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