

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.799 OF 2005

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JUDGMENT:

The instant appeal is preferred by the petitioner under Section 173 of Motor Vehicles Act, 1988, challenging the order, dated 30-09-2002, in O.P. No.1048 of 1997, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – II Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal').

2. By the aforesaid order, the Tribunal dismissed the claim of petitioner refusing to grant Rs.1,13,000/- (Rupees one lakh and thirteen thousand only) for damages said to have caused to his vehicle in a road accident by the lorry belonging to the 1st respondent insured with the 2nd respondent.

3. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of lorry bearing registration No. KA 01 5815, are respondent Nos.1 and 2, respectively.

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

5. The facts, in brief, are that on 30-06-1997 at about 11.00 P.M., while Ambassador Car bearing registration No. AP 9G 2745 belonging to the petitioner, was proceeding from Kodangal to Tandur, and when it reached Chennaram – Doulapur gate, a lorry bearing registration No. KA 01 5815 owned by the 1st respondent

and insured with the 2nd respondent came in opposite direction driven by its driver in a rash and negligent manner at high speed and hit the car, causing complete damages to the vehicle. The petitioner states that even the Station House Officer, Yalal Police Station registered a case in Crime No.20 of 1997. The petitioner claimed that he spent more than Rs.1,13,000/- for getting the damaged car repaired and, therefore, laid the claim under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for Rs.1,13,000/- against respondent Nos.1 and 2, who are owner and insurer of the said lorry.

6. The 1st respondent remained *ex parte* before the Tribunal.

7. The 2nd respondent – insurer filed counter, opposing the claim. Raising various pleas even, attacked the quantum of compensation claimed by the petitioner and, finally, sought to dismiss the claim petition.

8. The Tribunal formulated three points basing on the above pleadings. During inquiry before the Tribunal, on behalf of the petitioner, he examined himself as PW.1 and also examined PWs.2 and 3 and marked as Exs.A-1 to A-8. On behalf of the contesting respondent, neither oral nor documentary evidence was let in.

9. The Tribunal held point No.1 in favour of the petitioner, and on point No.2, observing that relevant witnesses were not examined to prove the documents filed by him, more particularly, one Mohd.Nazeer, who said to have been maintaining the work

shop and said to have issued relevant bills under Ex.A-4, did not step into witness box and, on the other hand, PW.3, who claimed to be the worker in the said shop without authorization deposed before the Tribunal and, thus, the bills under Ex.A-4 were not proved in accordance with the evidentiary rule and making some observations in regard to other documentary evidence, dismissed the claim.

10. It is that dismissal order which is challenged in the instant appeal, contending in the grounds of appeal that the Tribunal dismissed the claim on surmises and conjunctures without properly appreciating the evidence on record through PW.3, discarded Ex.A-4, bunch of bills, without assigning plausible reason, despite the fact that Ex.A-5 photographs reflects the damage caused to the car of the petitioner and, therefore, sought to set aside the order, granting the amount claimed.

11. Heard Sri C. Vikram Chandra, learned counsel for the appellant, and Mrs. A. Anasuya, learned counsel for the respondent No.2 – Insurance Company. As per the cause title, it is shown that respondent No.1 is not necessary party to the instant appeal.

12. The learned counsel for the appellant contended that though there was voluminous evidence forthcoming from the side of petitioner, the Tribunal was not right in dismissing the claim, merely on the ground that Mohd. Nazeer, who maintained the workshop, was not examined, despite the fact that one Mr. Narsimha Rao was examined as PW.3, and other observations made in regard to the documentary evidence is also not based on

correct appreciation of evidence on record.

13. The learned counsel for the respondent No.2 – Insurance Company supports the order passed by the Tribunal, contending that relevant witnesses were not examined, and there is absolutely no flaw in the order passed by the Tribunal rejecting the claim. The learned counsel also drew the attention of the Court that in fact, the appellant endorsed in the cause title of the memorandum of grounds of appeal that respondent No.1 is not a necessary party and, therefore, no liability can be fastened on the Insurance Company without the presence of the insured.

14. The last submission made by the learned counsel for the 2nd respondent was not disputed by the learned counsel for the appellant, who has perused the original grounds of appeal filed into Court and submits that the endorsement was made to the effect that respondent No.1 is not a necessary party, in which case, no liability can be fastened with the Insurance Company.

15. Now, the short question that involves in the present appeal is:

Whether the order under challenge can be sustained?

16. Perused the order and the evidence, both oral and documentary, let in by the petitioner.

17. It is contended by the learned counsel for the 2nd respondent that no liability can be fasted on the 2nd respondent in the absence of making the insured as party to the appeal. On perusal of the grounds of appeal, the appellant has endorsed that respondent No.1 is not a necessary party and it was

also signed by the learned counsel by mentioning the date as 04-03-2005, in which case, Insurance Company cannot be burdened with the liability to pay compensation.

18. Touching the merits of the case, the order under challenge reflects the reasons assigned by the Tribunal excluding Ex.A-4 for non-examination of Mohd. Nazeer, does not suffer from any legal infirmity, as nothing is brought out on record to show that it was beyond control of the petitioner to examine Mohd. Nazeer. Further more, PW.3's employment under the said Mohd. Nazeer is not forthcoming by any documentary evidence, more particularly, when the Tribunal observed that nothing was produced, such as, any account book etc. from the Nazeer Motor Workshop. So, on merits also, there is no case for the petitioner to grant compensation. Thus, viewed from any angle, absolutely there is no merit in the appeal and for the reason that in the absence of making the 1st respondent – insured as party, the appeal is not maintainable and, consequently, the same is liable to be dismissed.

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

20. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

February 26, 2015.

Mgr

