

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**M.A.C.M.A. No. 363 of 2005**

**JUDGMENT:**

The instant appeal is preferred by respondent No.2/National Insurance Company Limited, represented by its Branch Manager, Machilipatnam, aggrieved by the order dated 25.11.2004 in M.V.O.P. No.182 of 2001 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-VI Additional District & Sessions Judge, (Fast Track Court), Krishna at Machilipatnam (for short 'the Tribunal') whereby and whereunder a sum of Rs.50,000/- was granted as compensation, for the injuries sustained by the petitioner, against the respondents 1 and 2, as against the claim laid for Rs.1,00,000/- under Sections 140 and 166 of the Motor Vehicles Act, 1988.

2. The appellant herein is respondent No.2 before the Tribunal, while the respondent Nos.1 and 2, who are the claimant and owner of the lorry bearing registration No.AP 16U 5649 respectively, were petitioner and respondent No.1 in the original petition.

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

4. The facts, in brief, are that on 25.10.2000 at about 10.30 A.M., the petitioner was driving a lorry bearing registration No.AP 16U 5649, and when the lorry reached Narasapuram by-pass road, a tempo bearing registration No.KA 434 coming from Bangalore side and proceeding towards Kolar side collided with the lorry, due to which the petitioner sustained injuries and was shifted to Government Hospital, Kolar and the police registered a case in Crime No.201 of 2000 under Sections 279 and 337 of the Indian Penal Code. The petitioner contends that the driver of the tempo has driven it in a rash and negligent manner and at high speed and dashed the lorry despite the petitioner applying brakes having observed the tempo driven at high speed, due to which the lorry turned upside down. The petitioner claims that he took treatment at private hospital and spent huge amount and sought Rs.1,00,000/- towards compensation against respondents 1 and 2, who are the owner and insurer of the lorry which he was driving at the relevant time.

5. Respondent No.1 remained *ex parte* before the Tribunal. Respondent No.2 opposed the claim by raising various pleas.

6. Based on the above pleadings, the Tribunal framed three issues about responsibility for the accident. During enquiry, the petitioner got examined himself as PW.1 besides examining Dr.C.Sai Prasad as P.W.2 and marked exhibits A.1 to A.15. On behalf of the contesting respondents, one Sri S.V.Durga Prasad was examined as R.W.1 and exhibits B.1 and B.2, which are the Investigation report of respondent No.2's company and the copy of insurance policy of the vehicle respectively, were marked.

7. The Tribunal, on issue No.1 while discussing elaborately the evidence adduced by the petitioner both, oral and documentary and the evidence of R.W.1 and exhibit B.1, held that the tempo driver drove the vehicle in rash and negligent manner and caused the accident and thereby the petitioner sustained injuries and accordingly, answered issue No.1 in favour of the petitioner. On issue No.2, having found that the petitioner sustained fracture to both bones of his left leg, which was a compound fracture, awarded different amounts under relevant heads and in all a sum of Rs.50,000/- was awarded with interest at the rate of 6% per annum.

8. Aggrieved of the aforesaid order, respondent No.2/ National Insurance Company Limited preferred the instant appeal mainly challenging on the ground that the learned Tribunal, having found the rash and negligent driving of the tempo driver, was not right in fastening liability on it (respondent No.2). It is also stated that having found that there was rash and negligent driving on the part of the driver of the tempo, the owner and insurer of the tempo ought to have been made parties, in whose absence the claim is bad, and therefore, urged to dismiss the O.P. and also challenged the finding recorded by the Tribunal in assessing the disability.

9. Heard Sri Ravi Shankar Jandhyala, learned counsel for the appellant. No representation on behalf of respondent No.1. The appeal against respondent No.2 was dismissed for default.

10. At the outset, it is to be observed that the Tribunal, while recording the finding on issue No.1, just based on the evidence of P.W.1 and R.W.1 and the

Investigation Report of respondent No.2 in O.P/insurance company marked as exhibit B.1. In fact, the scene of offence Panchanama and the rough sketch of scene of occurrence are of vital significance in assessing whether the driver of the tempo or the present petitioner was responsible for taking place of the accident. Therefore, to afford an opportunity to the petitioner to file a rough sketch of scene and the scene of offence Panchanama, in order to enable the Tribunal to arrive at a correct conclusion, the matter is required to be remitted. This apart, it is also open to the petitioner to implead the owner and insurer of the opposite vehicle, in case the petitioner so chooses; so that, the petitioner cannot be deprived in case he is really entitled to compensation from the owner and insurer of the opposite vehicle. Viewed in that angle, certainly, the matter requires to be remitted to the Tribunal.

**11.** In the result, the appeal is allowed setting aside the order and decree passed by the Tribunal. The matter is remitted to the Tribunal for disposal in accordance with law, by affording an opportunity to both sides to adduce further evidence and permitting the petitioner to implead the owner and insurer of the opposite vehicle, if he so chooses. The Tribunal is directed to dispose of the petition, in accordance with law, within a period of six (6) months from the date of receipt of a copy of this order. There shall be no order as to costs.

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

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**A. SHANKAR NARAYANA, J**

Date: **25.02.2015**

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**Dt. 25.02.2015**

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