

THE HON'BLE SMT. JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL NO. 1984 OF 2004

AND

CROSS-OBJECTION (SR) No.54973 OF 2004

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COMMON JUDGMENT:

This appeal is filed by the appellant/2nd respondent under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') and the claimant filed cross-objections, aggrieved by the award dated 13.04.2004 passed by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, (for short, 'the Tribunal') Nizamabad, in O.P.No.217 of 1999, awarding compensation of Rs.1,59,193/-.

2. The claimant filed the above O.P under Section 166 of the Act, claiming compensation of Rs.3,00,000/- on account of the injuries sustained by her in a motor vehicle accident.

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

4. The brief averments made in the petition are as follows:

05. On 24.02.1999 at 11.00 a.m. while the claimant was going on road by walk at Morthad Village and when she reached in front of Style Tailor shop, Morthad, one scooter bearing No.AP-25-E-3449 driven by its driver in a rash and negligent manner and dashed against her, due to which she fell down and sustained grievous injuries. Immediately, she was shifted to Heera Orthopedic Hospital, Nizamabad, where she was treated by Dr.Koulaiah, thereafter she was shifted to Tirumala Orthopedic Hospital, Nizamabad and where she was treated by Dr.Bhupathi

Reddy, operation was conducted. She spent an amount of Rs.1,20,000/- towards treatment. It is further stated that prior to the accident she was working as Tailor and earning Rs.6,000/- per month. Due to the injuries, she was unable to move from the bed and walk properly. Due to the accident, her future earnings and amenities were also affected and she is depending on others. Therefore, she claimed compensation of Rs.3,00,00/- for the injuries sustained in the accident.

06. Respondents 1 and 2 filed their written statements.

07. The brief averments made in the written statement filed by the first respondent before the Tribunal are as follows:

08. The first respondent put the petitioner to prove the manner of accident, his age and income and further contended that the petitioner has not sustained any injury in the accident with the scooter belonging to the first respondent, he falsely filed the claim petition against the first respondent and the claim petition is therefore liable to be dismissed. It is further stated that his scooter was insured with the 2nd respondent and the policy was in force as on the date of accident. If the court would come to a conclusion that the claimant entitled to compensation, it may be awarded against the 2nd respondent and prayed to dismiss the petition against him.

09. The brief averments made in the written statement of the 2nd respondent are as follows:

10. The 2nd respondent denied the averments made in the petition, manner of the accident, age, occupation and income of the petitioner and the injuries said to have been received by her. It is further contended that even if the vehicle is insured with the 2nd

respondent company at the relevant point of time, it is liable only as per the terms and conditions of the policy and as per the provisions of the Act. The 2nd respondent is not aware of the criminal proceedings launched in the matter. The amount of compensation claimed by the petitioner is highly excessive and out of all proportions. Therefore, the claim petition is liable to be dismissed.

11. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs 1 to 3 were examined and got marked Exs.A.1 to A.13 and Exs.C.1 to C.3. On behalf of the first respondent, no oral or documentary evidence was adduced. On behalf of the 2nd respondent, no oral evidence was adduced, but Ex.B.1 was marked.

12. Basing on the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the scooter bearing No.AP-25-E-3449 driven by its driver and awarded compensation of Rs.1,59,193/- along with interest at 9% per annum.

13. Aggrieved by the award of the Tribunal, the 2nd respondent preferred the present appeal.

14. The learned counsel for the appellant/2nd respondent submitted that scooter bearing No.AP-25-E-3449 was planted and no accident was occurred on 24.02-1999. The entire accident as narrated by the petitioner is only to get the compensation. He further submitted that on perusal of Ex.A.3, it reveals that the accident took place on 23.02.1999 and the petitioner was taken treatment with one Dr.Koulaiah and therefore the claim of the petitioner that the accident occurred on 24.02.1999 is false. He

further submitted that the petitioner has not explained 5 days delay in filing the F.I.R. and the Tribunal without considering the documentary evidence, awarded compensation to the petitioner and that there is no finding with regard to the discrepancy mentioned in Ex.A.3 and other documents filed by the petitioner and finally argued that the petitioner already withdrawn half of the awarded compensation and prayed the court to restrict the award for half of the compensation and to set aside the remaining amount.

15. On the other hand, learned counsel for the first respondent/ claimant/ cross-objector submitted that in the accident the petitioner sustained grievous injuries and the Tribunal after considering the oral and documentary evidence, rightly awarded compensation of Rs.1,59,193/- and the said finding needs no interference. He further argued that other documents filed by the claimant were clearly established that the accident occurred on 24.02.1999, wherein the claimant sustained grievous injuries and also involvement of the scooter, therefore, the findings of the Tribunal regarding the manner of accident and awarding of the compensation need no interference and prayed to dismiss the appeal and to allow the cross objections enhancing the compensation.

16. Having regard to the submissions made by both the learned counsel, the points that arise for consideration are:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellant/2nd respondent is entitled for enhancement of compensation?

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POINTS:

17. A perusal of the oral and documentary evidence shows that the claimant sustained injuries on 24.02.1999 in a motor vehicle accident. It is the specific case of the claimant that on the date of accident, she was walking on the road at Morthad Village and when she reached near Style Tailor Shop one scooter bearing No.AP 25-E.3449 driven by its driver in a rash and negligent manner dashed her, due to which she sustained injuries to prove the manner of the accident, she filed Exs.A.1 and A.2 copy of F.I.R. and charge sheet

18. The main contention of learned counsel for the appellant is that the alleged accident took place on 23.02.1999, but not on 24.02.1999. The said fact was proved by Ex.A.3 - Medical Certificate issued by Dr.Koulaiah. In Ex.A.3 it is clearly mentioned that the claimant sustained injuries due to fall. It is nowhere mentioned about the involvement of the vehicle and the date of accident mentioned as 23.02.1999. This discrepancy is not explained by the claimant during course of trial. The Tribunal also not mentioned any finding regarding the date of accident. In these circumstances, the contention of the claimant regarding the manner of accident itself is doubtful and the insurer is not liable to pay compensation to the claimant.

19. Admittedly after filing of the appeal, this court permitted the claimant to withdraw half of the decretal amount which was deposited in the lower court. The learned counsel for the appellant rightly conceded to restrict the compensation which was already

withdrawn by the claimant as the she failed to prove the manner of accident and involvement of the vehicle. The insurance company has right to recover the amount which was drawn by the claimant, from the insured.

20. With this observation, the appeal is allowed. Consequently, the cross-objections are dismissed. The appellant is permitted to recover the amount which was withdrawn by the claimant, from the insured. There shall be no order as to costs.

21. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

23.12.2015
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