

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

M.A. C.M.A. Nos.493, 590 AND 699 OF 2005

Between:

Smt. Jakkam Rukumbai

Neerati Laxman

Jakkam Gangadhar

.. Appellants

AND

M. Narsaiah & another

..

Respondents

**DATE OF THE COMMON JUDGMENT PRONOUNCED:23-07-
2015**

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

1. Whether Reporters of Local newspapers

Yes

may be allowed to see the Judgments?

2. Whether the copies of judgment may be

No

Marked to Law Reporters/Journals.

1. Whether Their ladyship/Lordship wish

No

to see the fair copy of the Judgment?

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. Nos.493, 590 AND 699 OF 2005

COMMON JUDGMENT:

All these appeals are preferred challenging the orders, dated 20-12-2004, passed in O.P. Nos.60, 62 and 59 of 2003, respectively, which claims arise out of one and the same accident, as such, they are being disposed of by this common judgment.

2. The Tribunal dismissed all the O.Ps by the orders impugned. Aggrieved of the same, the respective petitioners (claimants), who are the injured, preferred respective appeals. Respondent Nos.1 and 2 herein, who are owner and insurer, respectively, of the lorry bearing No.APJ-3133 that involved in the accident, are respondent Nos.1 and 2, respectively, in the each O.P. before the Tribunal.

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

4. The facts, in brief, are that on 09-05-2002 at 10-30 a.m., while the respective petitioners along with agricultural produce were travelling in a lorry bearing No.APJ-3133 from Bodepalli village to Nizamabad Gunj, on the way at Chepur Village, since driver of the lorry

drove it at high speed in a rash and negligent manner and lost control over the lorry, it turned upside down resulting injuries to the petitioners. According to the petitioners, they were shifted to Government Hospital, Nizamabad initially, and thereafter, they were shifted to a hospital at Nizamabad, run by Dr. T. Narsing Rao, Orthopaedic Surgeon, and spent amounts towards treatment and therefore, each petitioner laid the claim separately for Rs.2,00,000/- against respondents Nos.1 and 2, who are owner and insurer, respectively, of the lorry involved in the accident.

5. Respondent No.1, owner of the lorry, remained *ex parte* before the Tribunal in all the O.Ps.

6. Respondent No.2, insurer of the lorry, opposed the claim raising certain pleas.

7. The Tribunal framed three identical (3) issues in each O.P. in the direction of fixing responsibility for the accident and held enquiry by examining the witnesses and marking the documents on behalf of each petitioner.

8. Respondent No.2 obtained permission under Section 170 of the Act to agitate the defences available to respondent No.1 since he remained *ex parte*, in all the O.Ps.

9. On appraisal of evidence on record, the Tribunal

dismissed the claims of the petitioners observing that they failed to prove the injuries said to have sustained in the accident in question. Aggrieved of the same, the instant appeals are preferred raising various grounds in the grounds of appeal.

10. Heard Sri M. Rajamalla Reddy, learned counsel for the petitioners (appellants), and Sri Srinivasa Rao Vutla, learned counsel for the insurer, and perused the material on record.

11. During the course of arguments, learned counsel for the insurer, submitted that in MA CMA No.494 of 2005, arising out of O.P. No.61 of 2003, dated 20-12-2004, of the same accident, this Court passed a common judgment along with MA CMA No.2 of 2005 and batch, dated 25-09-2014, remitting the matters to the Tribunal with certain directions. A copy of the said common judgment is placed on record, wherein, this Court observed, thus:

“In all these appeals, the common issue involved is that the disability certificates issued by the Doctors of Nizamabad were disbelieved by the Tribunal. It appears that this Court made certain observations against those doctors in certain matters. It also appears that in most of the cases, the doctors have not obtained the X-rays of the injured/claimants at the time of issuing disability certificates. In case of injuries, where it is averred that the injured claimant had sustained permanent disability, it becomes the duty of the

Tribunal to assess the disability. In fact, the Tribunal should summon the record from the concerned hospitals where the injured had taken treatment. Even if such record is not available, nothing prevents the Tribunal from sending the injured persons to the competent medical board to assess the disability. The Doctors, while issuing disability certificates, should take fresh X-rays of the injured and mention whether there is mal-union or non-union of the fractured bones or whether there is stiffness of muscles at the place of fracture or whether there is any restriction of movements of the limbs because of sustaining injuries and the after effects of the injuries. For the foregoing reasons, I am inclined to remand the matters back to the Tribunal.

Accordingly, the orders passed by the Tribunal in all these appeals are hereby set aside and the matters are remanded back to the Tribunal with a direction to refer the injured claimants to the competent Medical Board for assessing the disability sustained by the injured/claimants in the accidents and award just and reasonable compensation basing on the disability assessed by the Medical Board. The Tribunal may dispose of the matters as early as possible, preferably, within a period of four (04) months from the date of receipt of copy of this order. Needless to say that reasonable opportunity may be given to both the parties to canvass their respective case and to adduce necessary evidence while disposing of the matters. There shall be no order as to costs.”

12. By the aforesaid common judgment, since this Court has remitted the claim in CMA No.494 of 2005, which claim arises out of the accident in question, in which the petitioners herein also said to have sustained injuries,

these matters are remitted to the Tribunal in terms of the decision referred supra.

13. With the above directions, these appeals are disposed of. There shall be no order as to costs.

14. As a sequel thereto, Miscellaneous Applications, if any, pending in these appeals stand disposed of.

A. SHANKAR NARAYANA, J

July 23, 2015.

PV