

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.92 OF 2006

JUDGMENT:

The instant appeal is preferred by the petitioner aggrieved by the order dated 07.10.2005 in M.V.O.P.No.222 of 2002 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-Special Judge for the Trial of Offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Secunderabad, whereby and whereunder the claim of Rs.50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 ("the Act" for brevity), towards damages to the motor bike of the petitioner was dismissed.

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

3. The petitioner's case is that on 21.03.2000 at 6.45 pm, he along with his brother were proceeding on their Hero Honda motor bike on NH-7 near Kamuni Cheru culvert, New Citizen Kanta of Shamshabad, during which time, a lorry bearing registration No.APK 466 came and hit the motor bike due to which the vehicle got damaged. The damage was estimated at Rs.40,000/-. The rider of the motor cycle also sustained injuries. He stated that he was in Government service and spent about Rs.1,000/- towards his conveyance on account of damage to the vehicle and he sought compensation of Rs.50,000/-.

4. The first respondent-owner of the lorry remained *ex parte*. The second respondent-insurer opposed the claim raising various pleas and attributing rash and negligent driving to the rider of the motor bike. It is also specifically pleaded that the liability of the insurer is restricted to Rs.6,000/- under the Act in a case of vehicle damage of the third party. Further, it is also stated that the Oriental Insurance Company, which was the insurer of the motor cycle, rejected the claim of the petitioner on the ground that he has no driving licence, as he lost the same in the said accident.

5. The Tribunal framed the following issues:

- i. Whether the accident has taken place due to rash and negligence of the lorry bearing No.ATK 466 by its driver?
- ii. What is the just amount that can be awarded as compensation and against whom?
- iii. To what relief?

6. To decide the controversy, during the enquiry, the petitioner examined himself as P.W.1 and examined two witnesses as P.Ws.2 and 3 and marked Exs.A1 to A8. The insurance company-second respondent examined its official from local branch as R.W.1 and marked Ex.B1-insurance policy.

7. The Tribunal, on perusal of the evidence let in by the parties, held issue No.1 in affirmative.

8. On issue No.2, discussing elaborately the evidence of P.Ws.1 to 3 and recording that Ex.A5 is only an estimate and evidence of P.W.3 does not indicate that repairs were carried out to the damaged vehicle and even basing on the evidence of P.W.1 that the claim with his insurer was still pending on the date of his deposition, the Tribunal held that there is no evidence worth to prove that the amount was tendered for carrying out the repairs mentioned in Ex.A5 and accordingly, dismissed the claim petition.

9. It is the above said order which is under challenge in this appeal contending in the grounds that despite the fact that the claim made by the claimant is moderate and reasonable, the Tribunal, somehow, without adverting to Exs.A3 and A5 and appreciating the contents therein in proper perspective and also the evidence of P.W.3, went wrong in dismissing the claim petition based on surmises and conjectures.

10. Heard Sri C.Vikram Chandra, learned counsel for the appellant. Despite service of notice on respondent Nos.1 and 2, none appears.

11. Perused the order and the evidence on record, both, oral and documentary, let in by the petitioner.

12. At the outset, it is to be observed that the finding recorded by the Tribunal

cannot be construed as suffering from any legal infirmity in view of the fact that the Tribunal rightly found that legally acceptable evidence was not placed before it to prove that the amount mentioned in Ex.A5 was tendered and repairs were carried out to the motor bike in view of the answers given by P.W.1 as well as P.Ws.2 and 3 in proving that the vehicle was repaired pursuant to Ex.A5. Ex.A5 is only an attested copy of estimated damages issued by M/s. Lakshmi Motors, Somajiguda, Hyderabad. No doubt, P.W.3 was examined to prove the signature in Ex.A5, but his evidence is of no assistance to prove that the amount mentioned in Ex.A4 was really incurred by the petitioner. Even Ex.A7 would not assist the petitioner since it was only a delivery challan-cum-invoice of the vehicle. Ex.A8 is the inquest panchanama which proves the damage caused to the motor bike but would not advance the claim of the petitioner. Thus, viewed from any angle there is absolutely no evidence to prove that the petitioner spent the amount as per Ex.A5. Consequently, no merit is to be found in the appeal.

13. Therefore, the M.A.C.M.A. is dismissed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

March 19, 2015.

RRB