

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.754 of 2006

JUDGMENT:

The instant appeal is preferred challenging the order dated 06.10.2005 in M.V.O.P.No.1168 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge (Fast Track Court), Nizamabad at Bodhan (for short, 'the Tribunal'), whereby and whereunder the claim of Rs.2,00,000/-, laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') r/w Rule 455 of the Rules framed thereunder, for the injuries sustained by the petitioner, was dismissed.

2. The appellant herein is the petitioner, while the respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 05.06.2001 at about 10-30 a.m., the petitioner, who was a minor boy aged 5 years as per the cause title described as a student-cum-labour, was travelling in a tempo bearing registration No.MWP 1736 belonging to the 1st respondent from Bodhan towards Nizamabad side along with other labourers employed by the 1st respondent and when they reached Yedpally village limits, since the driver of the tempo driven it in a rash and negligent manner dashed a tree located by the side of the road, due to which, he sustained multiple fractures. He was shifted to Government Hospital, Bodhan and later referred to Government Headquarters Hospital, Nizamabad, where he was treated by Dr.L.Ramulu, Dr.T.Narsing Rao and Dr.Dhoop Singh and he was operated upon and rods were also inserted. According to the petitioner, he was taking treatment from private hospital even on the date of making the instant claim, and, therefore, sought Rs.2,00,000/- from respondent Nos.1 and 2, who are the owner and insurer of the tempo. He was represented by his father, next friend, in laying the instant claim.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent

No.2-insurer opposed the claim raising various pleas, and, in fact, a specific plea was raised that there was clear violation of terms and conditions of the policy since the tempo was a goods carrying vehicle and that the petitioner cannot be construed as a labourer working in the tempo when kept in view, the age of the petitioner, and, therefore, sought to dismiss the claim.

6. Basing on the said pleadings, the Tribunal framed the following issues:

"1) Whether the accident has taken place due to rash and negligent driving of Tempo bearing No.MWP 1736 by its driver?

2) Whether the petitioner is entitled for compensation? If so, to what amount and against whom?

3) To what relief?"

7. During enquiry, the next friend of the petitioner, who is father of the petitioner, was examined as P.W.1 besides examining one Habeeb Asham as P.W.2 and Dr.Dhoom Singh as P.W.3 and marked Exs.A.1 to A.7; whereas, on behalf of respondent No.2-Insurance Company, no witnesses were examined, but however, Exs.B.1 and B.2, which are copies of charge and insurance policy, were marked.

8. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the petitioner, held issue No.1 that the accident had occurred on account of rash and negligent driving of the tempo driver and answered the said issue accordingly. On issue No.2, the Tribunal has scanned the evidence let in by the petitioner and made elaborate discussion in paragraph-11 and having found that the name of the petitioner was not referred to in Ex.A.1-F.I.R. and Ex.B.1-charge sheet as an injured, viewed with suspicion the manner in which the accident has occurred and the petitioner said to have sustained injuries. This apart, the Tribunal also pointed out that the doctor, who initially treated the petitioner at Bodhan Government Hospital and said to have referred to Government Hospital, Nizamabad, was also not examined to prove that the petitioner sustained injuries and pointing out that had he been really treated in Bodhan Government Hospital, it would have been recorded as medico legal case by the hospital authorities at Bodhan and intimated the factum of accident to the police and the petitioner sustaining injuries in the said accident involving the tempo of the 1st respondent, in which case the police would have certainly not only registered F.I.R. but also mentioned the petitioner as one of the

injured in the list of witnesses appended to the charge sheet, and, thus, rejected the stand of the petitioner recording the finding that no reliance can be placed on the evidence of P.W.1 and the documentary evidence filed by him, and, therefore, dismissed the claim petition in toto.

9. It is the aforesaid order which is under challenge in the instant appeal by the petitioner seeking enhancement of compensation contending in the grounds that the Tribunal did not properly appreciate the evidence of P.Ws.1 to 3, and without assigning reasons, the evidence was discarded, and, therefore, sought to grant compensation setting aside the order and decree passed by the Tribunal.

10. Heard Sri P.Radhiv Reddy, learned counsel for the appellant-claimant. No representation on behalf of the 2nd respondent-Insurance Company. Despite service of notice on the 1st respondent-owner of the vehicle, none appears for him.

11. The finding recorded by the Tribunal that the name of the petitioner is not finding place in Ex.A.1-F.I.R. or in Ex.B.1, which is certified copy of charge sheet filed by the 2nd respondent-Insurance Company marked on consent and dismissed the claim petition, cannot be faulted with for certain other reasons even which account for vital probabilities standing adverse to the claim laid by the petitioner. A perusal of Ex.A.6-case sheet also does not disclose as to how the petitioner sustained injuries, but the vital aspect as to how the petitioner sustained the injuries for which treatment was given is not finding place in Ex.A.6. This apart, as rightly observed by the Tribunal, the doctor who said to have treated the petitioner at Government Hospital, Bodhan, is not examined by the petitioner and further the circumstance that extract of accidents register in case the stand of the petitioner is true, he must have obtained and filed in proof of their claim, which the petitioner has not chosen to do. The cumulative effect of these circumstances would lead to an irresistible inference that the petitioner failed to present legally acceptable evidence in substantiating his stand, and, therefore, the finding recorded by the Tribunal rejecting the claim and dismissing the claim petition, is confirmed.

12. Accordingly, the instant appeal is dismissed confirming the order and decree, dismissing the claim petition, passed by the Tribunal. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any pending in the instant

appeal, stand disposed of.

A. SHANKAR NARAYANA, J

02nd April, 2015

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