

HON'BLE SMT JUSTICE ANIS

M.A. C.M.A. No.1304 of 2005

J U D G M E N T :

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the Judgment and Decree dated 21.02.2005, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-IV Additional District Judge (FTC), Nizamabad in O.P.No.1561 of 2001, dismissing the appeal.

2. The appellant/petitioner filed the above O.P under Section 166 of the Act, claiming compensation of Rs.2,00,000/- for the injuries sustained by the petitioner in a motor vehicle accident, that occurred on 21.07.2001.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 21-07-2001 while the petitioner was travelling in an Auto bearing No.AP-25-U-37 from Nizamabad to Maklor and when the auto reached near SBH Bank, Nizamabad at about 5.00 PM, the driver of the said Auto drove it at high speed and could not control the vehicle and due to which, the vehicle turned turtle and the petitioner sustained fracture to her waist, both hipbones and injuries on head, legs, hands, back and other parts of the body. Immediately, after the accident, the petitioner was shifted to Government Hospital, Nizamabad for treatment and from there she was shifted to private hospital for further treatment and she has incurred Rs.50,000/- towards her treatment. The petitioner stated that she was aged about 35 years and was hale and healthy and was working as Beedi

Roller and earning Rs.2,000/- per month, but due to the accident, the petitioner sustained permanent disability and unable to walk and work and became dependent. The petitioner also underwent severe pain and suffering after the accident. It is also stated that the 1st respondent - owner and the 2nd respondent - insurer are jointly and severally liable to pay the compensation.

5. The Respondent No.1 remained ex-parte.

6. The brief averments made in the written statement filed by the 2nd respondent – Insurance Company are as follows :

The 2nd respondent put the petitioner to prove the manner of the accident, the age and income of the petitioner and stated that at the time of accident, the driver of the Auto was not holding subsisting driving licence to drive such vehicle and the vehicle was not road worthy with valid permit and fitness to ply and finally stated that the claim of the petitioner is highly excessive and arbitrary and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner got examined herself as P.W.1 and got examined another witness as P.W.2 and Exs.A1 to A4 and Exs.C1 and C2 were marked.

On behalf of respondent No.2, no oral evidence was adduced, but Ex.B1 – copy of Insurance Policy was marked by consent.

8. After considering the oral and documentary evidence, the Tribunal held that the petitioner has failed to prove that she met with an accident and sustained injuries in the accident and that the petitioner's name was not entered either in MLC or in admission register, even though P.W.2 issued the Wound Certificate mentioning that P.W.1 was treated in Government Hospital.

Further, there is no record to show that the petitioner took treatment on 21-07-2001 in the Government Hospital as per Ex.C2 and further held that Wound Certificate issued by P.W.2 is not a genuine one and therefore dismissed the petition. Aggrieved by the judgment of the Tribunal, the petitioner filed the present appeal.

9. The learned counsel for the petitioner contended that in the accident the petitioner sustained grievous injuries and without considering the evidence of P.W.1, her claim was dismissed, therefore, prayed the Court to grant compensation.

10. On the other hand, the learned counsel for the 2nd Respondent argued that in view of the orders of this Court in A.A.O. No.3518 of 2004, the CB CID was directed to enquire about P.W.2 – Dr.L.Ramulu issuing Wound Certificates and Disability Certificates, further, Ex.C2 clearly shows that it was issued by P.W.2 to help the petitioner. When the petitioner never treated on 21-07-2001 as per MLC or Admission Register, the question of P.W.2 issuing Wound Certificate does not arise and finally prayed the Court to dismiss the appeal as the finding of the tribunal needs no interference.

11. Having regard to the submissions made by the learned counsel appearing for both parties, the points which are to be decided in this appeal are as follows:

1. Whether the appellant/petitioner is entitled for compensation as prayed for?
2. Whether the order passed by the Tribunal is just and reasonable?

12. **POINTS 1 & 2:** A perusal of the evidence of P.W.1 coupled with Exs.A1 and A2 shows that the accident occurred due to rash and negligent driving of the driver of the auto bearing No.AP-25-U-37. The burden lies on the petitioner to prove that she has suffered

grievous and simple injuries in the accident. P.W.1 in her evidence stated that in the accident she has sustained grievous injuries and she took treatment in the Government Hospital, Nizamabad for about one week and she spent Rs.50,000/- towards medical expenses. Ex.A3 is the Wound Certificate which shows that the petitioner has suffered the following injuries :

- i. Fracture of pelvis
- ii. Abrasion of left knee 2 x 2 cm.

13. P.W.2 is the Doctor who issued Ex.C1 – Disability Certificate to the petitioner. The Tribunal addressed a letter to the Superintendent, Government Hospital, Nizamabad to cause production of Case Sheet and MLC register of the petitioner dated 21-07-2001. The Superintendent, Government Hospital, Nizamabad sent a letter mentioning that the petitioner was not treated in the Government Hospital and the name of the petitioner was not entered in the MLC register and Admission Register. Therefore, the petitioner receiving the grievous and simple injuries cannot be accepted, in view of the letter of the Superintendent, Government Hospital, Nizamabad. The Tribunal also categorically gave a finding that P.W.2 is a stock witness and he used to issue Wound Certificates on his own and further this Court already directed CB CID to enquire about issuing of Wound Certificates and Disability Certificates by P.W.2 and another Doctor Narsinga Rao of Nizamabad. As there is no record to show that the petitioner was received grievous and simple injuries and also suffered disability and further as there is no record to show that she was admitted in the Government Hospital and took treatment for about one week, the Tribunal rightly dismissed the claim of the petitioner and the said finding needs no interference and the petitioner is not entitled for any compensation.

14. Accordingly, the M.A C.M.A. is dismissed. No order as to

costs.

15. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

**ANIS,
J.**

Date: .07.2015

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