

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-

M.A.C.M.A.No.3569 of 2005

JUDGMENT:

Aggrieved with the order dated 12.09.2005 in M.V.O.P.No.297 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (FTC), Cuddapah (for short, 'the Tribunal') whereby and whereunder the liability sought to be cast on insurance company was rejected by dismissing the claim against the insurance company, the instant appeal is preferred by the petitioner seeking enhancement of compensation under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. The appellant herein is the petitioner in the original petition before the Tribunal, while respondent Nos.1 and 2, who are the owner and insurer of the auto bearing No.AP-04-U-5039 respectively, were respondent Nos.1 and 2 respectively.

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

4. The facts in brief are that the petitioner, resident of Diguvaplaem Village, Badvel Mandal, on 17.03.2003, along with some others went to Sri Kasinayana Jyothi Kshethram in an auto bearing No.AP-04-U-5039, belonging to the 1st respondent, and after worship while they were returning to Siddhavaram Village in the same auto stayed at the house of their relation and in the next morning they continued the return journey and at about 07.30 AM, when the auto reached Yellopalli turning, the driver of the auto drove it in a rash and negligent manner at high speed and applied sudden brakes, due to which, it turned upside down and fell down into a pit at the depth of 4 feet towards eastern side of the road, resulting in injuries to the petitioner. The petitioner claims that he was 45 years old and an agriculturist earning Rs.4,000/- per month and sought Rs.1,50,000/- as compensation, having laid claim under Section 166 of the Act.

5. The 1st respondent-owner of the vehicle remained *ex parte* before the Tribunal

and the 2nd respondent-insurance company opposed the claim and a specific plea was put forth by the

2nd respondent that the driver of the auto did not possess valid driving license and violated the conditions of the policy and permit.

6. Basing on the above pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner himself was examined as P.W.1 besides examining Dr. J.Nagesh as PW.2 and marked Exs.A.1 to A.4. On behalf of the 2nd respondent-Insurance Company, one K.T. Kumar was examined as RW.1 and copy of insurance policy was marked as Ex.B.1.

7. The Tribunal, on appraisal of evidence let in by the respective parties on issue No.1, held that due to rash and negligent driving of R-1's auto driver namely, Ranganayakulu, answered the said issue. On issue No.2, while determining the compensation at Rs.63,000/- for the injuries sustained by the petitioner fastened liability on the 1st respondent-owner of the vehicle alone, while dismissing the claim against the 2nd respondent-insurance company by appreciating the evidence on record and the discussion of the Tribunal finds place in Paras 14 and 15 of the order having concluded that actually the auto was driven by Ranganayakulu, but the petitioner introduced one M. Venkata Ramanaiah in place of Ranganayakulu with the ulterior motive of claiming compensation since, the said Ranaganayakulu did not possess license at all and the said Venkata Ramanaiah possesses learner's license, more particularly, that the evidence of PW.1 runs contra to the contents of Ex.A.1. The author being no other than PW.1 himself, has given the complaint stating therein that Ranganayakulu who is his close relative was driving the auto at the relevant time, but changed the version to that of M. Venkata Ramanaiah during the course of proceedings by introducing the said name and, therefore, held that there are no bona fides in the claim made by the petitioner against the insurance company and the insurance company since not liable to indemnify the owner of the auto, dismissed the claim against the 2nd respondent-insurance company.

8. Aggrieved of the same, the instant appeal is preferred contending in the grounds of appeal that it is well settled principle of law that third party cannot be made to suffer for the lapses of the insured and insurer placing reliance on the decision of the Hon'ble Apex Court in **National Insurance Co. Ltd. v. Swaran Singh**. It is also stated that the Tribunal granted meager compensation despite the petitioner

sustaining multiple injuries that resulted in permanent disability. It is stated that the 2nd respondent is liable to pay compensation and therefore, sought to set aside that finding of the Tribunal and to fix liability on the 2nd respondent also, both jointly and severally on respondent Nos.1 and 2 to pay compensation that would be determined in the instant appeal by way of enhancement.

9. Heard Sri K. Rathanga Pani Reddy, learned counsel for the appellant and Sri Katta Laxmi Prasad, learned counsel for the 2nd respondent. Despite service of notice, none appears for the 1st respondent-owner of the vehicle.

10. The points that arise for consideration are

1. Whether the order of the Tribunal is liable to be set aside to the extent in exonerating the 2nd respondent from liability to pay the compensation; and
2. Whether the petitioner is entitled to enhancement of compensation.

Point No.1:

11. Perused the order under challenge and the evidence on record let in by the respective parties. A careful perusal of Ex.A.1 would reflect that the petitioner himself was the complainant as his name is recorded in column No.6 therein. Column No.7 which deals with the 'suspect' shows the name of 'Banda Ranganayakulu' and the description shows that he was 27 years old belonging to Rajuvari Veedhi, Bankapalem, Badvel Town, the driver of the auto bearing No.AP-04-U-5039, which auto was the accident vehicle in the instant claim petition. The contents of the complaint would reveal that while narrating the very same incident as projected in the claim petition mentioned above, also mentioned the relationship with the auto driver who is no other than, son of his brother-in-law and son's name is shown as 'Ranganayakulu' and he was driving it in a rash and negligent manner accounting for the incident. Thus, Ex.A.1 version, which was given by the petitioner himself, would reflect that the auto was driven by his brother-in-law's son-'Ranganayakulu'. Thus, the very close relationship amongst the parties would clearly indicate that there was no scope for the petitioner to wrongly mention the

name of the driver of the auto, which was involved in the accident. Strangely, when it comes to filing the charge sheet after investigation, the name of one 'Mundlapati Venkata Ramanaiah' was shown as accused and further more, nothing is forthcoming in the charge sheet averments-Ex.A.3 in introducing the name of said 'Venkata Ramanaiah' in place of 'Banka Ranganayakulu'. In fact, the petitioner has not chosen to examine the investigating officer to explain as to how the name of 'Ranganayakulu' has been substituted in place of the name of 'Venkata Ramanaiah'. The Tribunal rightly observed that since the version in Ex.A.1 was first in point of time and since no motive can be attributed for wrong mentioning of the same and further more, observing that since the said Ranganayakulu did not possess any driving license at all to drive the auto and since the said Venkata Ramanaiah was possessing learners' license to drive the auto, he was purposely introduced from the stage of investigation and, therefore, disbelieved the version of the petitioner and dismissed the claim to the extent of 2nd respondent. That finding since is well-reasoned and well-appreciated basing on appreciation of evidence on record cannot be viewed as perverse nor it suffers from any legal infirmity and, therefore, that finding recorded by the Tribunal is confirmed. The natural consequence being the dismissal of claim against the 2nd respondent by the Tribunal, which, certainly does not warrant interference at all.

Point No.2:

12. Coming to the enhancement of compensation, a perusal of the order of the Tribunal would reflect that the Tribunal has properly appreciated the evidence and determined the compensation even assigning the reason that the evidence of PW.2 and Ex.A.4 would not assist the petitioner to determine the compensation using multiplier system. Therefore, on this point also the order of the Tribunal does not warrant interference to enhance the compensation.

13. In the result, the appeal is dismissed confirming the order of the Tribunal. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

Date: 27.02.2015.

ska