

**THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**M.A.CMA.No.1401 OF 2009**

**JUDGMENT:**

Dissatisfied with the award of Rs.5,000/- as compensation by order and decree, dated 11.01.2007, passed in O.P.No.712 of 2002 on the file of Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Adilabad, as against the claim of Rs.75,000/- laid under Sections 166 and 163A of the Motor Vehicles Act, 1988, the present appeal is preferred by the petitioner in the said O.P. seeking enhancement of compensation.

2. The appellant is petitioner, whereas respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle, are respondent Nos.1 and 2 in the O.P. before the Tribunal.

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

4. The facts would show that on 05.12.2001, while the petitioner was proceeding on a Scooter bearing registration No.AP-25-G-6758 as a pillion rider on National High Way No.7 and when the Scooter reached near Doodgaon Village petrol bunk, since the person who was driving the

Scooter could not control the speed, the Scooter went off the road margin and turned upside down, due to which, the petitioner sustained fracture to both bones of his left leg and other bleeding injuries on his person. The petitioner, claiming that he got treated himself in Nirmal Sai Hospital, Nirmal, as inpatient under the supervision of Dr. C. Srinivas, Orthopaedic Surgeon, and underwent surgical interventions on 07.12.2001, 20.12.2001 and 08.01.2002 with fixation of implants, externally and internally, and had spent Rs.35,000/- towards medical and other expenses, sought a sum of Rs.75,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the Scooter, respectively.

5. Respondent No.1, owner of the Scooter, remained *ex parte* before the Tribunal.

6. Respondent No.2 opposed the claim stating that the rider of the Scooter did not possess subsisting and valid driving licence and as such, there was violation of policy conditions and, therefore, the Insurance Company is not liable to pay compensation.

7. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed the following three issues:

“1) Whether the petitioner sustained injuries in the accident occurred on 5.12.2001 due to rash and negligent driving of the scooter bearing No.A.P.25/G-6758, by its driver?

- 2) Whether the petitioner is entitled to any compensation? If so, to what amount and against whom?
- 3) To what relief?"

8. During enquiry, petitioner besides examining himself as PW.1 examined one Dr. A. Nageshwar Rao, on commission, as PW.2 to identify the signature of Dr. C. Srinivas, who treated the petitioner, as he went abroad, and marked Exs.A1 to A11. On behalf of respondent No.2, no evidence, either oral or documentary, was let in.

9. The Tribunal, on appraisal of evidence on record, held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal, on the ground that the injuries sustained by the petitioner were not proved through medical evidence by examining the Doctor who treated the petitioner i.e., Dr. C. Srinivas, granted only Rs.5,000/- as compensation, that too, directing respondent No.2 – Insurance Company to deposit the said amount initially and recover the same from respondent No.1, by placing reliance on the judgment of this Court in **United India Insurance Co. Ltd., Mancheril v. Lingampalli Mondhi and others**<sup>[1]</sup>.

10. It is the aforesaid order which is under challenge in the instant appeal by the petitioner – appellant seeking enhancement of compensation.

11. Heard Sri S. Surender Reddy, learned counsel for the appellant. None appears for the respondents,

despite service of notice.

12. Strangely, copy of the policy is not forthcoming. Neither the petitioner made an attempt to obtain and file copy of the policy nor did he compel respondent No.2 – Insurance Company to file copy of the policy. The main question involved in the present claim petition is whether the policy is an 'Act Policy' or 'Comprehensive Policy', which has to be resolved so as to entitle the petitioner – pillion rider to claim compensation, besides the other violation of terms and conditions of the policy and failure to possess valid and effective driving licence by the rider of the Scooter at the relevant time.

13. No issue addressing the nature of the policy is framed. Therefore, it is a case where the aforesaid issue has to be resolved and as such, the matter is remanded to the Tribunal directing it to frame an issue touching upon the nature of the policy and afford opportunity to both sides to lead further evidence, with a further direction to dispose of the matter within six (6) months from the date of receipt of a copy of this order.

14. Accordingly, the appeal is allowed setting aside the order and decree under challenge and remanding the matter to the Tribunal for disposal in accordance with the directions given above.

15. Miscellaneous Petitions, if any, pending in this

appeal, shall stand closed. There shall be no order as to costs.

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**A. SHANKAR**

**NARAYANA, J**  
August 02, 2016.  
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[\[1\]](#) 2002 (3) ALD 670