

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.2668 OF 2005

JUDGMENT:

Aggrieved by the order dated 23.06.2005 of dismissal of claim petition in M.O.P.No.538 of 1998 on the file of Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Visakhapatnam, the petitioner preferred the instant appeal.

2. The appellant is the petitioner, while respondent Nos.1 and 2, who are the owner and insurer, respectively, of the motor cycle bearing registration No.AP-31-H-5641, are respondent Nos.1 and 2, respectively, 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 04.11.1997 at about 8:00 PM, the petitioner was proceeding as a pillion rider on the Bullet motor cycle bearing registration No.AP-31-H-5641 belonging to respondent No.1 from Daba Gardens to M.V.P. Colony and when the motor cycle reached T.B. Hospital Junction, on the National Highway, an auto rickshaw bearing registration No.AHQ-6285 driven by one

B. Gangaraju came in opposite direction on wrong side

and hit the motor cycle, due to which, she is said to have sustained fracture of middle phalange of left 5th toe and multiple abrasions on the right leg. Hence, she laid the claim under Section 140 of the Motor Vehicles Act, 1988 for grant of Rs.25,000/- towards compensation with interest at 12% per annum.

5. Respondent No.1 remained *ex parte* before the Tribunal and respondent No.2 – Insurance Company opposed the claim by filing counter, mainly contending that there was a collision between two vehicles and, therefore, the driver, owner and the insurer of the auto rickshaw are necessary parties and the claim petition is bad for non-joinder of necessary parties. By way of an additional counter, respondent No.2 raised a plea that the petitioner and respondent No.1 are wife and husband and both are Advocates, and the licence of the auto rickshaw and the Fitness Certificate have been expired as per the report of the Motor Vehicles Inspector and, as such, the petitioner intentionally filed the claim petition against respondent No.2 - insurer.

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

“1) Whether the respondents 1 and 2 are liable to pay the compensation as prayed for by the petitioner?

2) To what relief?”

7. During enquiry, on behalf of the petitioner, Dr. B. Udaya Kumar, Civil Assistant Surgeon, K.G. Hospital, Visakhapatnam, was examined as P.W.1 and the Disability Certificate issued by him was marked as Ex.A1. On behalf of respondent No.2, no evidence, either, oral or documentary, was let in.

8. As could be seen from the sequence of events transpired, as projected by the Tribunal, it is really strange and un-understandable as to why the petitioner has not examined herself as a witness, though she laid the claim stating that she sustained injuries in the said accident. In fact, the claim petition of the petitioner was once dismissed on 20.08.1999 with a direction to implead the auto rickshaw driver and its insurer. But the said condition was not complied with and the review petition was also dismissed. The revision in C.R.P.No.2120 of 2001 filed by the petitioner before this Court was also dismissed. As per the observations made by the Tribunal, though the matter was referred to the Lok Adalat twice at the request of the petitioner, both the parties were absent and finally, the Tribunal, having noticed from Motor Vehicles Inspector's report that the auto rickshaw involved in the accident does not have insurance policy, made an observation to the effect that on account of the said fact the petitioner was not impleading the owner of the offending auto rickshaw

and thus avoiding to comply with the order passed by the Tribunal, and held that respondent No.1 was not responsible for the accident and the person, who was responsible for the accident, and the owner of the auto rickshaw, were not made as parties to the claim petition and when respondent No.1 was not responsible for the accident, the Insurance Company of the motor cycle on which the petitioner and her husband were proceeding on the date of accident cannot be made liable to pay compensation even under the 'No fault liability' and thereby, dismissed the claim petition.

9. Heard Sri M.P. Chandramouli, learned counsel for the appellant, and Sri N.J. Sunil Kumar, learned Standing Counsel for respondent No.2. Though notice was served on respondent No.1, none appears.

10. Admittedly, the petitioner has not stepped into the witness box to examine herself so as to prove the claim made by her. In view of the very fact that she has not complied with the condition imposed by the Tribunal to implead the owner of the auto rickshaw and its insurer, if the auto rickshaw was insured with any insurance company, more particularly, when the accident had occurred on account of the rash and negligent driving by the driver of the auto rickshaw, certainly, respondent No.2 cannot be made liable to pay compensation.

11. Therefore, the findings recorded by the Tribunal

that respondent No.1, who was riding the motorcycle on which the petitioner was travelling as a pillion rider, was not responsible for the accident and as such, respondent No.2 – insurer of the vehicle of respondent No.1 cannot be made liable to pay the compensation, even under ‘no fault liability’, and the person, who was responsible for the accident, and the owner of the crime auto rickshaw, which involved in the accident, were not made as parties to the claim petition, certainly, warrant no interference as the same are well reasoned based on appreciation of evidence occurring in the instant case. In that view of the matter, there is no merit in this appeal.

12. Accordingly, the instant appeal is dismissed. There shall be no order as to costs.

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

A. SHANKAR

NARAYANA, J

April 13, 2016.

MD/MSR