IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

FRIDAY THE NINETEENTH DAY OF AUGUST
TWO THOUSAND AND SIXTEEN

PRESENT
HONOURABLE SMT. JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL NO. 3356 OF 2004

Between:

Shaik Mohammed … Appellant

Vs.

Shaik Moula & Anr. … Respondents

Counsel for the Petitioner: Sri S. Surender Reddy

Counsel for the Respondent: Sri V.Venkat Ram Reddy

The Court made the following: [Judgment follows]

HONOURABLE SMT. JUSTICE ANI8

CIVIL MISCELLANEOUS APPEAL NO. 3356 OF 2004.

JUDGMENT :

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 [for short 'the Act'], aggrieved by the award dated 21/07/2004 passed by the Motor Accident Claims Tribunal-cum-I-Additional District Judge, Adilabad, in OP.No. 804 of 2000, whereunder and whereby the petition is dismissed.

2. The appellant filed the above O.P. under Section 166 (1) (a) and 163-A of the Act, claiming compensation of Rs.1,50,000/- on account of the injuries sustained by him in a motor vehicle accident.

3. The brief averments made in the petition are that on 14/07/2000 he along with his wife proceeded to Kupti village in an Auto bearing No. AP.1-T-3812 which belongs to first respondent and when they reached near Devulanayak bus stop, the driver of the Auto drove it in a rash and negligent manner and was unable to

control the same and therefore, the auto turned turtled resulting the petitioner fell down and received grievous injuries. The petitioner became unconscious and shifted to Government Hospital, Adilabad and he undergone treatment as in-patient. Later on he took treatment in a private hospital and spent Rs.8,000/- for his treatment. According to the petitioner he was hale and healthy at the time of accident but due to the accident he sustained injuries and due to the said injuries he is unable to do any work. In this connection, Police also registered Crime No. 65/2000 under Section 337 IPC. Therefore, the petitioner prays to grant Rs.1,50,000/- as compensation. Hence, the claim.

3.The first respondent remained ex-parte.

4. The brief averments in the counter filed by the second respondent are as follows:

According to the second respondent, the accident occurred on account of overloading of the Auto. The first respondent is the son of the petitioner and this fact was suppressed by the petitioner and also the first respondent. It is also stated that the first respondent has not paid premium in respect of the coverage of the Auto, therefore, the petitioner is gratuitous passenger and he is not entitled to claim compensation. It is also stated that the compensation claimed by the petitioner is highly excessive and exorbitant and the second respondent is not liable to pay any compensation. It is also specifically stated that the Auto-rickshaw is a transport auto and the first respondent is being the driver of the Auto had non-transport licence, therefore, the first respondent has violated the conditions of the policy and finally prayed to dismiss the claim-petition.

5. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the appellant himself got examined as PW-1 and got marked Exs.A-1 to A-6 and also examined PW-2 doctor, who treated him. On behalf of the second respondent, no oral evidence is adduced. Ex.B-1 is marked.

6. After considering the oral and documentary evidence, the Tribunal dismissed the claim-petition filed by the petitioner/appellant. Aggrieved by the nil award passed by the Tribunal, the appellant preferred the present appeal seeking compensation.

7. Learned counsel appearing for the appellant argued that the accident occurred due to the rash and negligent driving of the

Auto i.e., first respondent and the Tribunal without appreciating the evidence dismissed the claim of the petitioner. The Tribunal also failed to consider the injuries sustained by the petitioner and not granted compensation, therefore, prayed the Court to allow the appeal.

8. On the other hand, learned counsel appearing for the second respondent argued that Ex.A3 injury certificate cannot be taken into consideration because as per Ex.A-3 the injuries are fresh in nature and Ex.A3 was forwarded by the Police in 13/8/2000 whereas the appellant sustained injuries on 14/07/2000, therefore, Ex.A-3 cannot be relied upon. It is also argued that the first respondent has not paid any extra premium to the passenger travelling in the Auto. Further the petitioner is the father of the first respondent, who drove the vehicle on the date of accident and relied upon decision in **JAYAVARAPU RAJAMMA AND ORS. V/s. JAYAVARAPU LAXMINARAYANA AND ORS** [1] and relied the following terms:

> 1. A statutory insurance policy in terms of Section 147 of the Act covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle.

> 2. Section 147 of the Act does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.
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> 3. An insurer can enter into a contract of insurance with the insured covering a risk wider than the minimum requirement of the statute whereby the risk to the owner of the vehicle/insured or gratuitous passengers or such other risks not covered by the statute can also be covered, for which premium is paid.
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> 4. The owner of the vehicle/insured driving or travelling in the vehicle in case of injuries or his legal representatives in case of his death in the accident can make a claim only if the policy by its terms covers such risk.
>
> 5. The kith and kin of the insured for injuries and their legal representatives in the event of their death in the accident can sustain claims for compensation as third party claims, provided the relevant policy of insurance covers such a risk.

9. Learned counsel also argued that the appellant is the father of the first respondent and first respondent failed to pay extra premium and also there is no name in the policy to cover the risk of gratuitous passengers and therefore, prayed to dismiss the appeal by confirming the orders passed in OP.No. 804 of 2000 dated 21/7/2004.

10. Having regard to the submissions made by the learned counsel for both the parties, the only point which is to be decided in this appeal is whether the appellant is entitled for any compensation and whether the nil award passed by the Tribunal be set aside ?

11. There is no dispute that on 14/7/2000 the appellant

sustained injuries in a motor vehicle accident due to the rash and negligent driving of the first respondent. To prove the injuries, the appellant himself examined as PW-1 and filed Ex.A-3 attested copy of the injury certificate. In his evidence, he stated that he sustained grievous injuries and simple injuries and he was admitted on the date of accident in the Government Hospital and discharged on 7/7/2000. To prove his injuries, the appellant got examined PW-2. According to PW-2 the appellant sustained three injuries; i.e.,

i) Fractures involving 3rd to 8th ribs on the left side;

ii) An abrasion of 3" x 2" on the left side of chest posteriorly; and

iii) An abrasion of 1" x ½" on right wrist.

As per Ex.A-3, which discloses that the appellant was referred to the Government Hospital only on 13/8/2000 by the police and as per Ex.A-3 wound certificate the injuries are fresh in nature though the accident occurred on 14/7/2000. Learned counsel for the appellant contended that there is no dispute that the first respondent was driving the Auto on the date of accident and the appellant is no other than the father of the first respondent. There is no factual dispute on this point. It is also vehemently contended that the first respondent has not paid any extra premium to cover the risk of the passengers travelling in the Auto. Likewise, Insurance Policy does not cover the risk of the kith and kin of the insured. In the absence of specific terms in the Insurance Policy, the appellant/petitioner is not entitled to claim compensation from the Insurance Company. Therefore, the Insurance Company is not liable to pay any compensation to the appellant/petitioner and the Tribunal after considering the oral and documentary evidence rightly come to a conclusion that the appellant/petitioner is not entitled for any compensation. Hence, this Civil Miscellaneous Appeal is dismissed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE ANIS .

19/08/2016
I s L

HONOURABLE SMT.JUSTICE ANIS

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[1]) **2007 [6] ALD 306 [DB]**