

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.1426 AND 2118 OF 2009

COMMON JUDGMENT:

Both these appeals arise out of different orders and decrees, dated 02-02-2009, passed by the learned Chairman, Motor Accident Claims Tribunal - cum - III Additional District and Sessions Judge, Guntur (for short 'the Tribunal'), in M.V.O.P. Nos.610 of 2007 and 605 of 2007, respectively, but they arise from one and the same accident.

2. Former appeal is preferred by the petitioners, who are legal representatives of G. Adinarayana, as wife and daughter, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), seeking compensation of Rs.2,00,000/- for the death of G. Adinarayana in a road accident, against which, the Tribunal has granted a compensation of Rs.1,46,000/- with interest at 7.5% per annum against respondent No.1, owner of the vehicle alone, by dismissing the claim petition against respondent No.2 - M/s. New India Assurance Company Limited.

3. Latter appeal is preferred by the petitioner - injured, who was actually riding the two-wheeler, on which the deceased was riding the pillion, requesting to grant compensation of Rs.1,50,000/-, but the claim petition was dismissed by the Tribunal by the order passed on the same day.

4. Aggrieved over the aforesaid orders, the present appeals are preferred by the legal representatives of the deceased and the injured, respectively, on various grounds, which are unnecessary to refer to, as both the appeals require to be remitted to the Tribunal for the reason that in the claim petition in the former appeal, the Tribunal granted Rs.1,46,000/- against respondent No.1, owner of the vehicle, whereas, in the claim petition in the latter appeal was dismissed in *limini* even against owner of the vehicle, though, set of documents in both the appeals are one and the same except inquest and post-mortem reports.

5. Heard Sri Ch. Ravindra Babu, learned counsel for the appellant(s) in both the appeals, and Mrs. A. Jayanthi, learned standing counsel for respondent No.2 - Insurer. In the former appeal, respondent No.1 was served with notice, but none appears for him. In the latter appeal, though, notice was not served on respondent No.1, it has to be construed that the notice was properly sent as in other appeal notice was served on him.

6. Perused the orders and the material on record, both, oral and documentary.

7. So far as the former appeal is concerned, the Tribunal observed that the inquest report would reveal that the death of deceased took place in Government General Hospital, Guntur, while initially he was admitted in Amaravathi Hospital. The Tribunal, of

course, believing the evidence of RW.1, who is Senior Assistant from the local branch of respondent No.2 and the contents of Ex.B-4, which was a letter, dated 23-07-2007 addressed to respondent No.1 and the endorsement said to have made by respondent No.1 thus: "I have given the vehicle to An electrician without my knowledge and taken accident who has no driving license. After the accident I disposed the vehicle" said to have signed by respondent No.1 stating himself as owner of the vehicle, AP 16V 9397, dismissed the claim petition against Insurer, despite the fact that the owner was not summoned and examined to prove the said endorsement. Certainly, the evidence of RW.1 cannot be substituted and it is incumbent on the part of Insurance Company to prove by examining the owner. It is not as though on this aspect alone, the matter requires to be remitted.

8. But, there is yet another reason. The Tribunal disbelieved the evidence of PW.3 in the former appeal and PW.2 in the latter appeal, the doctors working in Sai Bhaskara Hospital, Guntur, and PW.3 mentioning that the deceased was treated from the date of accident till 16-05-2007, and against their advise, he got himself discharged. The Tribunal assigned the reason that the charge sheet would not disclose that the deceased was taken to Sai Bhaskara Hospital. Besides the same, the Tribunal also observed that no documentary evidence was filed by the petitioners to show that the deceased and the injured were admitted in Amaravathi Hospital, but it

was not clear to which hospital they were shifted. The Tribunal dismissing the claim petition assigned reasons in paragraph No.6 thus:

“.....Petitioner also produced Ex.A5 copy of the hospital intimation given by Sai hospital. As per the contention of the petitioner, at the 1st instance the petitioner was shifted to Amaravathi hospital. As per the report attached to Ex.A1 also, it is clearly mentioned that the injured persons were shifted to Amaravathi hospital and basing on that report case was registered. When the report was already and case was given registered, sending intimation to Arundelpet police and that such copy was issued by Tadikonda police, which is not at all attached to the FIR, creates doubt about Ex.A5. At the 1st instance, the petitioner was admitted at Amaravathi hospital. There will be an admission record at Amaravathi hospital but the petitioner is suppressing the record. As per the case sheet the petitioner was admitted at about 1:30 PM on 8-5-07 and on the same day was admitted at Sai Bhaskar Hospital. There is no mention of time in Ex.A5 about the admission at the hospital. The petitioners did not produce the certified copy of the wound certificate before the court. Except the case sheet there is no document available to show that the petitioner sustained fracture injuries. As per the charge sheet he was admitted at Sai Bhaskar hospital at the 1st instance. The case was registered under 337 IPC at the 1st instance. As per the charge sheet L.W.2 was found having grievous injuries. The wound certificate was also issued by the doctor. The wound certificate is not filed before the court. There is no explanation for

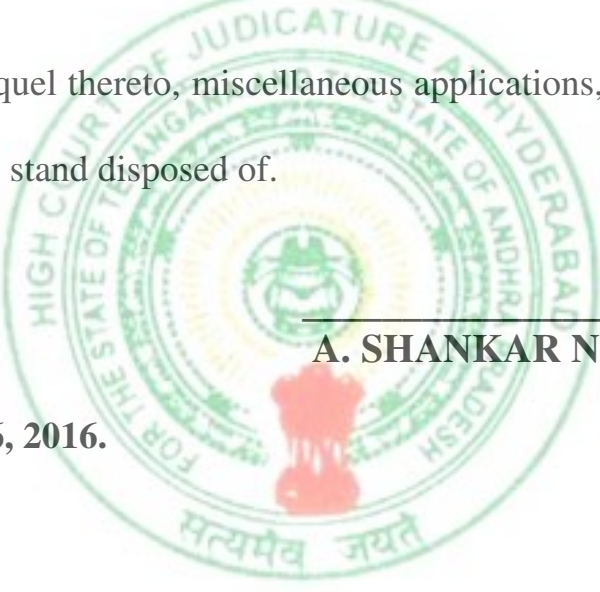
not producing of the wound certificate before the court. The allegation in the petition is that petitioner sustained fracture both bones of right leg above the knee. As per the evidence of the doctor he observed fracture of right tibia and fibula and interlocking with fixing of tibia. Tibia and fibula bones will be below the knee. The evidence of doctor is also to the same effect. But the evidence of P.W.1 and also the pleading is that the fractures were above the knee. The suppression of wound certificate, the evidence of doctor against to the evidence of P.W.1 and pleading, creates any amount of doubt about the injuries caused to petitioner. Since the wound certificate is suppressed and the evidence of petitioner against to the evidence of the doctor the injuries as stated by petitioner can not be accepted when the injuries are not proved petitioner can not claim any compensation for the injuries which were pleaded by him, only basing on the evidence of the doctor which is also exaggerated. Since the petitioner failed to prove the injuries as the body of P.W.1 through his evidence and the evidence of the doctor is against to the evidence P.W.1. Petitioner is not entitled to claim any compensation and the petition is liable to be dismissed.”

There is no clarity in the orders passed by the Tribunal under challenge in these appeals. Therefore, both the matters require to be remitted to the Tribunal in order to enable both the parties to lead further evidence, more particularly, to examine the Investigating Officers shown in charge sheet Ex.A-2 and the owner of the vehicle

who said to have endorsed on Ex.A-4 and to dispose of both the claim petitions within a period of six (06) months from the date of receipt of a copy of this common judgment.

9. In view of the foregoing discussion, both the appeals are allowed, and the orders and decrees passed by the Tribunal which are under challenge in these appeals are set aside remitting the matters to the Tribunal for disposal in accordance with law as per the directions indicated in the above. There shall be no order as to costs.

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



A. SHANKAR NARAYANA, J

September 06, 2016.
Mgr