

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A No. 729 OF 2009

JUDGMENT:

The instant appeal is preferred by the 2nd respondent – M/s. National Insurance Company Limited in M.V.O.P. No.270 of 2004, aggrieved by the order, dated 16.06.2006, on the file of the Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge, Kurnool at Nandyal, (for short ‘the Tribunal’) passed in the said M.V.O.P, on the main ground that, though, fundamental violation was complained of, the Tribunal went wrong in fastening liability on the Insurance Company.

2. The appellant herein is the 2nd respondent in the O.P. before the Tribunal, while respondent No.1 herein is the petitioner and Respondent No.2 is respondent No.1.

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

4. The facts in brief are that on 04.02.2004 at about 3.30 a.m., the petitioner along with his friends started from Nandyal to proceed to Allagadda in a Tata Sumo bearing No.AP 21-H-2036, to see his ailing mother and at about 4.30 a.m., when they reached Venkatapuram Village limits on National Highway No.18, the driver of the vehicle drove it in a rash and negligent manner at high speed and lost control over the vehicle and hit a tree by the side of the road, due to which, the petitioner and his friends sustained grievous injuries. The petitioner claimed that they were referred to Government Hospital, Nandyal, and from there, he was shifted to Osmania General Hospital, Hyderabad, for better treatment. Since the petitioner suffered pain and suffering on account of grievous injuries sustained by him, he sought a sum of Rs.1,50,000/- towards compensation by filing the above M.V.O.P under Section 166 of the Motor Vehicles Act, 1988.

5. The owner of the vehicle remained *ex parte*. The second

respondent-Insurance Company filed counter. A specific plea was taken in the counter as to violation of the terms and conditions of the policy with regard to the use of the vehicle and thereby, sought to dismiss the claim petition against it.

6. The Tribunal on the basis of the said pleadings framed the following issues:

- 1) "Whether there is rash and negligence on the part of the driver of the vehicle Tata Sumo bearing No.AP21-H-2036 in causing the accident?
- 2) Whether the petitioner is entitled for compensation and if so, to what amount and from which of the respondents?
- 3) To what relief."

7. During enquiry, the petitioner, besides examining himself as P.W.1, examined the doctor, who treated him, as P.W.2 and got marked Exs.A.1 to A.10 to substantiate his claim. On behalf of the second respondent-Insurance Company, none was examined except marking copy of the insurance policy as Ex.B-1, on consent.

8. The Tribunal, having decided issue No.1 in favour of the petitioner, on issue No.2, while elaborately discussing the evidence of P.W.2-doctor, determined the compensation payable to the petitioner at Rs.1,76,750/-. Since the petitioner restricted his claim to Rs.1,50,000/- only, the Tribunal granted Rs.1,50,000/- towards compensation.

9. Heard Sri S. Agasthya Sharma, learned Standing Counsel for the appellant. No representation for respondent No.1. Despite service is completed on respondent No.2, none appears for him.

10. A perusal of the impugned order would reflect that the Tribunal did not even advert to the pleas raised by the Insurance Company in its counter regarding the use of the vehicle, which according to it, amounted to violation of the terms and conditions of the policy. Further, no relevant issue was framed, as can be seen from the issues framed by the Tribunal extracted above. In that view of the

matter, certainly, the Tribunal went wrong in determining the compensation without framing relevant issue, which gains significance if it is held in favour of the Insurance Company. Hence, the matter requires to be remitted to the Tribunal.

11. Accordingly, the appeal is allowed setting aside the impugned order and decree and the matter is remitted to the Tribunal for disposal in accordance with law, after giving opportunity to both sides to lead further evidence in addition to the evidence already let in both, oral and documentary. Since the claim petition relates to the year 2004, it is desirable to direct the Tribunal to dispose of the Original Petition within six months from the date of receipt of a copy of the order. If any amount is withdrawn by the petitioner, the same is subject to the result of the claim petition. No order as to costs.

12. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

A. SHANKAR NARAYANA, J

Date: 22.07.2016
va