

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1504 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellant-petitioner, aggrieved by the order and decree dated 09.02.2007, passed in M.V.O.P.No.388 of 2005 by the Motor Accidents Claims Tribunal-cum-XI Additional District and Sessions Judge, Tenali, Guntur District (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.40,000/- was awarded towards compensation with interest @ 7.5% per annum, as against the claim of Rs.1,00,000/- laid under Section 166 of the Act, for the injuries sustained by him in a motor accident, seeking enhancement of compensation.

2. The appellant herein is petitioner, respondent No.1 – owner of offending Lorry bearing No.AEW 2919 is respondent No.1; and respondent No.2 – Oriental Insurance Company Limited is respondent No.2, in M.V.O.P.No.388 of 2005. For the sake of convenience, the parties are referred to as they are arrayed in M.V.O.P.No.388 of 2005 before the Tribunal.

3. The facts would show that on 07.02.2005 at about 11-30 a.m., while the petitioner was proceeding in 1st respondent's lorry bearing No.AEW 2919, along with others as a loading and unloading coolie from Aplapati Nagar to reach Parimi Village for unloading the bricks load and when they reached in between Kolluru – Donepudi village, the driver of the 1st respondent's lorry

drove it in a rash and negligent manner at high speed, as a result of which the said lorry turned upside down, resulting in injuries to the petitioner and others, who were hospitalised and treated. The petitioner, therefore, filed the aforesaid claim petition, under Section 166 of the Act, seeking a sum of Rs.1,00,000/- towards compensation.

4. Before the Tribunal, though the 1st respondent – owner of the offending lorry was represented by a counsel, the 2nd respondent – insurer alone contested the claim by raising various pleas, specifically pleading that the petitioner was an unauthorised passenger, as he was travelling in a goods vehicle, in violation of the terms and conditions of the insurance policy and hence, risk is not covered and thereby sought to dismiss the claim petition against it.

5. Basing on the pleadings, the Tribunal framed three issues in order to fix liability and determine the amount of compensation.

6. During enquiry, the petitioner, besides examining himself as P.W.1, got examined P.W.2 – Dr. J. Hanumantha Rao, who treated him, and marked Exs.A-1 to A-4, besides Exs.X-1 and X-2, which are Case Sheet and X-rays, two in number, respectively. On behalf of the 2nd respondent - insurer, R.Ws.1 and 2 were examined, and marked Ex.B-1 to B-3.

7. The Tribunal, on appraisal of evidence on record and basing on the decisions, on which reliance was placed by the respective parties, more particularly, placing reliance on the judgments of the Hon'ble Supreme Court in **M.V. Jayadevappa vs. Oriental Fire General Insurance Company Ltd.**^[1] and **The New India**

Assurance Company Limited vs. Lodya Shankar and others ^[2],

on Issue No.1, recorded a finding holding that the 2nd respondent – insurer is not liable to pay compensation as it is not under obligation to indemnify the 1st respondent – owner of the offending lorry, for the reason that he contravened the terms and conditions of the policy and hence he alone is liable to pay the compensation.

8. On Issue No.2, the Tribunal, while reconciling the description of the injuries that find place in Ex.A-3 – Certified copy of Wound Certificate, wherein the Doctor described them as simple injuries, and with the injuries spoken to by P.W.2, who deposed that P.W.1 – petitioner sustained one grievous injury, which was treated conservatively with below knee POP casting, and the other injuries simple in nature, granted a sum of Rs.13,000/- towards pain and suffering. Further, the Tribunal, basing on the evidence of P.W.2 – Doctor to the effect that the disability sustained by the petitioner was 10% and basing on Ex.X-1 – Case Sheet and Ex.A-3 – Wound Certificate, taken the age of the petitioner as 30 years at the time of accident, and accordingly, by applying the relevant multiplier '18, arrived at a sum of Rs.27,000/- ($\text{Rs.15,000/-} \times 10/100 \times 18 = 27,000/-$) towards partial permanent physical disability. Thus, the Tribunal granted a total compensation of Rs.40,000/- ($\text{Rs.13,000/-} + \text{Rs.27,000/-}$) with interest @ 7.5% per annum from the date of the petition till realisation.

9. Dissatisfied with the said amount of compensation, the petitioner has filed the present Civil Miscellaneous Appeal, contending in the grounds of appeal that – (i) the Tribunal was not right in exonerating the 2nd respondent – insurer from its liability; and (ii) the compensation awarded by the Tribunal is very meagre;

and hence sought to grant the balance amount by mulcting liability on the 2nd respondent – insurer also.

10. Heard Sri N. Subba Rao, learned counsel for the appellant – petitioner. Though service was completed on respondent Nos.1 and 2, none appears for them.

11. Perused the order under challenge and evidence on record, both, oral and documentary.

12. The finding recorded by the Tribunal that the liability cannot be fastened on the 2nd respondent – insurer cannot be faulted for the reason that the petitioner has to be construed as an unauthorised passenger travelling in a goods vehicle, which is a lorry, in the instant case, therefore, the said finding is maintained.

13. Concerning the compensation awarded by the Tribunal, the amount of Rs.5,000/- granted towards grievous injury, and Rs.8,000/- granted towards 8 simple injuries @ Rs.1,000/- for each injury, is maintained. In fact, the Tribunal ought not to have granted the other amount of Rs.27,000/- towards permanent physical disability basing on the evidence of P.W.2 that the petitioner sustained permanent physical disability at 10%, since there is no Disability Certificate issued, either by the Government Hospital or by P.W.2.

14. In that view of the matter, viewed from any angle, the petitioner is not entitled to enhancement of compensation and the Civil Miscellaneous Appeal is liable to be dismissed.

15. Accordingly, this Civil Miscellaneous Appeal is dismissed, confirming the order and decree dated 09.02.2007, passed in

M.V.O.P.No.388 of 2005 by the Tribunal. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

19.08.2016.

Msr

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[\[1\]](#) 2005 ACJ 1801 (SC)

[\[2\]](#) 2004 (3) ALD 400