HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1161 OF 2009

JUDGMENT:

Respondent No.2 - M/s. United India Insurance Company Limited in O.P. No.115 of 2004 on the file of Chairman, Motor Accidents Claims Tribunal - cum - III Additional District and Sessions Judge (Fast Track Court), Mahabubmagar at Gadwal (for short 'the Tribunal'), is the present appellant.

2. Aggrieved over the order and decree, dated 31-01-2006, in the said O.P. passed by the Tribunal, whereby and where-under a sum of Rs.26,000/- was granted as against the claim of Rs.50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') as compensation with interest at 7.5% per annum thereon for the injuries sustained by the petitioner, the insurer preferred the instant appeal, mainly on the ground that no insurance policy was issued by it concerning the vehicle alleged to have involved in the accident.

3. Respondent No.2 and the appellant herein, who are owner and insurer of a Jeep bearing registration No.AP-22U-5696, respectively, are respondent Nos.1 and 2, respectively, while respondent No.1 is the petitioner in OP before the Tribunal.

4. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in OP before the Tribunal.

5. The fact-situation would reveal that on 23-01-2004 the petitioner boarded the Jeep bearing registration No.AP-22U-5696 at Devarkadra at about 7.30 a.m., and when it reached limits of Manyamkonda at about 8.00 a.m., near Kakatiya Public School, since its driver drove it in a rash and negligent manner and was unable to control the speed of the vehicle, it turned upside down, resulting in injuries to the petitioner.

i) Claiming that he spent amounts towards medical expenses and other charges, sought a sum of Rs.50,000/- as compensation against respondent Nos.1 and 2, who are owner and insurer of the aforesaid jeep, respectively.

6. Respondent No.1, owner of the jeep, remained *ex parte* before the Tribunal.

7. Respondent No.2 - Insurer opposed the claim raising the plea that the driver of the vehicle was not possessing valid, subsisting driving license at the time of accident, and required the petitioner to prove that the vehicle was covered by insurance policy to entitle himself

for the amount.

8. The Tribunal, basing on the aforesaid pleadings, framed three issues.

9. During inquiry, the petitioner examined himself as PW.1 and marked Exs.A-1 to A-5. On behalf of the Insurance Company, no witnesses were examined and no documents were filed.

10. The Tribunal having analyzed the evidence on record, found issue No.1 in favour of the petitioner.

11. On issue No.2 holding that there was insurance policy concerning the jeep involved in the accident, granted Rs.25,000/- lump sum amount as against the claim made by the petitioner i.e., Rs.10,000/- towards loss of earning capacity; Rs.5,000/- towards transport charges; Rs.3,000/- towards extra nourishment; Rs.12,000/- towards pain and suffering; Rs.10,000/- towards permanent disability; and Rs.10,000/- towards loss of life, besides granting a sum of Rs.1,000/- for simple injury which was contusion on the left shoulder and, thus, a total sum of Rs.26,000/- was granted as compensation with interest at 7.5% per annum thereon.

12. Heard Sri A. Ramakrishna Reddy, learned standing counsel appearing for the appellant - Insurer.

Though, service was completed on respondent Nos.1 and 2, none appears for them.

13. The learned counsel for the appellant - Insurance Company would submit that photostat copy of insurance policy ought not to have been admitted by the Tribunal and basing on it ought not to have granted any amount and no opportunity was given to the Insurance Company and, therefore, sought to set aside the award.

14. Perused the order and the material on record, both, oral and documentary, let in by the parties.

15. When Ex.A-4 is marked, no objection was taken as to its authenticity by the Insurer. This apart, Insurance Company has not made any effort to examine the witnesses to disprove the contents of Ex.A-4, or the very existence of Ex.A-4's original. Though, in the grounds of appeal, it is mentioned that no opportunity was given to the appellant - Insurer, as could be seen from the proceeding-sheet in O.P. No.115 of 2004, as many as (17) chances were afforded on every occasion, the Insurer was not ready. Therefore, that ground is unsustainable.

16. In a case where fabrication is put forth, which is gathered from the submission made by the learned counsel for the Insurer now, the entire onus rests on the

party pleading the same and discharge the burden. When no witnesses at all were examined on behalf of the Insurer, that ground is not available. Thus, there is absolutely no merit in the appeal.

17. Therefore, the appeal is dismissed confirming the order and decree passed by the Tribunal in all respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

July 21, 2016.
Mgr