

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2009 OF 2005

JUDGMENT:

The unsuccessful petitioner-claimant in O.P. No.56 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge (Fast Track Court), Nizamabad (for short, 'the Tribunal') preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') requesting to set aside the dismissal order passed by the Tribunal on 04.11.2004.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of the auto bearing registration No.AP 11T 8976, are respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that the petitioner, belonging to Nadpally village of Dichpally, Nizamabad District, claiming herself a beedi roller earning Rs.8,000/- per month aged 26 years, said to have met with an accident on 25.03.2000 at about 7-00 p.m. in the outskirts of Bibipur, while she was travelling in an auto bearing

registration No.AP 11T 8976, while returning to Nadpally village along with others, when the said auto turned upside down due to the rash and negligent driving of the auto driver resulting in injuries to her. The petitioner states that she sustained a fracture to her right thigh and right collar bone and admitted in Pragathi Hospital, Nizamabad and became permanently disabled and unable to earn anything and, thus, sought a sum of Rs.2,00,000/- under Section 166 of the Act.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer, has strongly resisted the claim requiring the petitioner to prove every allegation mentioned in the claim petition besides contending that the amount sought is highly excessive while reserving its right to raise the defences under Section 170 of the Act.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined herself as P.W.1 besides examining one Dr. Narsing Rao as P.W.1 and marked Exs.A.1 to A.8 to substantiate her claim; whereas, on behalf of respondent No.2-Insurance Company, R.Vanishree, Manager of its local branch was examined as R.W.1 and Exs.B.1 and B.2 were marked, which are copies of driving licence and insurance policy, respectively.

7. The Tribunal, though, agreed to the extent that the auto turned upside down on account of the driver losing control over it, still, on issue No.2, by thoroughly scrutinizing the evidence, both, oral and documentary, let in by the petitioner, arrived at the conclusion that the very claim itself is false as the same is got falsified through the evidence of P.Ws.1 and 2. The Tribunal has recorded cogent reasons. It would suffice to extract the observations of the Tribunal contained in paragraph Nos.13, 14 and 15, which reflect the nature of evidence let in by the petitioner. Before extracting the same, it would be relevant to mention that it is really strange that when the petitioner claimed that the accident said to have taken place on 25.03.2000, she submits the document in the nature of discharge summary-Ex.A.6 showing that she was admitted on 24.03.2000 itself, a day prior to the date of alleged accident and that has been the focal point in the finding recorded by the Tribunal in recording the observations. Paragraph Nos.13, 14 and 15 run thus:

"13. Now the million dollar question that comes up for consideration at this stage of the discussion is how far the evidence given by PWs.1 and 2 is acceptable. The answer is this question must be in the negative for the following reasons: -

14. It is the categorical evidence of PW.1, the victim in this O.P., that she met with the alleged accident at 7 p.m. on 25.3.2000 and that immediately, thereupon, she was shifted to a private clinic locally known as Pragathi

Hospital, Nizamabad. But in her evidence she stated that immediately after the accident she was admitted in the Govt.Hospital, Nizamabad for treatment and that she was operated upon in that hospital itself. These facts were stated by her i.e. PW.1 in para No.3 of her chief-examination itself. There is no whisper, whatsoever, in her evidence to say that she was referred to Pragathi Hospital for her operation. Likewise, there is no averment, whatsoever, in her petition filed in this O.P. to say that she was admitted in the Govt.Hospital, Nizamabad in the first instance and that thereafter, she was shifted to Pragathi Hospital for her further treatment and also for a surgery. The pleadings of the petitioner as well as the evidence given by PW.1 in this O.P. are self contradictory and mutually excluding. In other words, the evidence given by PW.1 who is none other the petitioner in this O.P. is running contrary to her pleadings.

15. Be that as it may, it is the categorical evidence of PW.2, Dr.T.Narsing Rao, that he examined the petitioner i.e. PW.1 on 24.3.2000 itself for the alleged injuries sustained to her in the motor accident and that he examined her in the Govt.Hospital, Nizamabad on 24.3.2000. While so stating he marked the discharge card covered by Ex.A6. A perusal of it reveals that he categorically mentioned the date of admission of PW.1 in Nizam Orthopaedic Clinic as 24.3.2000. It also reveals that he mentioned the date of discharge of PW.1 as 19.4.2000. Thus a careful perusal of the date of admission mentioned in this Ex.A6 certificate as

24.3.2000 clearly reveals that the alleged treatment of PW.1 in Nizamabad Orthopaedic Clinic for the injuries said to have sustained to her in the motor accident in question is nothing, but a total false story. Because, the FIR covered by Ex.A1 as well as the charge sheet covered by Ex.A2 filed by the petitioner do clearly reveal the date of accident as 25.3.2000 but not 24.3.2000. In other words the date of accident, as can be seen from the documents covered by Exs.A1 and A2 the FIR and the charge sheet respectively, is 25.3.2000. Whereas Ex.A6, the medical certificate issued by PW.2 reveals that she was admitted in Nizam Orthopaedic Clinic on 24.3.2000 for treatment of the alleged injuries sustained to her in that accident. Thus the date of admission of PW.1 for treatment in Nizam Orthopaedic Clinic is a day prior to the alleged date of the accident. In other words, the alleged date of admission of PW.1 in hospital for treatment is the date preceeding to the date of the alleged accident i.e. 25.3.2000. Thus the contest of the petitioner is proved to be highly self-contradictory. It goes without saying further that the alleged treatment of the petitioner has preceded to the date of the accident. So, the evidence adduced by the petitioner through PW.2 is proved to be absurd and baseless. Even the discharge card covered by Ex.A5 also clearly reveals that the date of admission of the petitioner in hospital was corrected from 23.3.2000 to 25.3.2000. It was also admitted by PW.2 during the course of his cross examination that the said correction was not attested by its author. So,

the theory of treatment, introduced by the petitioner, for the period from 24.3.2000 onwards for the injuries stated to have sustained to her on 25.3.2000 in the alleged motor accident in question is proved to be totally false and invented to suit her contest in this O.P. At this stage it is not out of context to refer page No.1 of the wounds certificate covered by Ex.A3. A mere perusal of it reveals that the Incharge Station House Officer of P.S. Dichpally referred the petitioner in this O.P. to the Govt.Hospital, Nizamabad on 28.3.2000 for her examination, but not on 25.3.2000 the alleged date of the accident. This lacuna in the contest of the petitioner further renders her claim as highly suspicious."

The other discussion made by the Tribunal on Ex.A.7 is unnecessary to add. However, there have been certain comments made by the Tribunal touching the credibility of P.W.2 in the concluding portion of paragraph No.16.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal ought to have believed the evidence of P.Ws.1 and 2 and the documentary evidence Exs.A.2 to A.8 and ought to have granted the amount of compensation as claimed.

9. Heard Sri M.Rajamalla Reddy, learned counsel for the appellant-petitioner, and Sri Naresh Byrapaneni, learned Standing Counsel for respondent

No.2-Insurance Company. Though, respondent No.1 was not served, since the notice was taken out to the address given in the cause title of the original petition, it can be presumed that the notice was properly sent. Even otherwise, respondent No.1 suffered decree being the owner of accident vehicle. Hence, in his absence, the issue in this case can be adjudicated upon.

10. During the course of arguments, when the observations and findings recorded by the Tribunal were pointed out by the learned Standing Counsel for respondent No.2-Insurance Company, learned counsel for the appellant-petitioner, in fact, expresses that he leaves the matter for consideration of the Court. Perhaps, he has no argument to advance to counter the observations made by the Tribunal and the findings recorded by the Tribunal as mentioned above. Thus, the appeal is devoid of merit.

11. The instant appeal is, therefore, dismissed confirming the impugned order and decree passed by the Tribunal. There shall be no order as to costs.

12. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

22nd June, 2016

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