

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.1306 of 2009

JUDGMENT:

The unsuccessful petitioner in O.P.No.37 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Nizamabad (for short, 'the Tribunal'), preferred the present appeal assailing the dismissal order, dated 09.02.2005, passed in the said O.P filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') claiming compensation of Rs.1,20,000/- with interest at 24% per annum.

2. The appellant herein is the petitioner-claimant, while the respondent Nos.1 and 2 herein, who are the owner and insurer of the motorcycle bearing registration No.AP 25 A 9366, are respondent Nos.1 and 2, respectively, in the original petition.

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

4. The basic facts needed for disposal of the present appeal are that on 05.02.1998 at about 2.00 p.m., while the petitioner was driving the motorcycle bearing No.AP 25 A 9366 and reached Mubaraknagar bus stand situated on Armoor to Nizamabad road, on

seeing a cyclist, who is alleged to have suddenly come there, crossing the road, the petitioner attempted to control the speed of the motorcycle and, in that process, dashed the cyclist and fell down resulting in fracture injuries to his left hand. He claims that he was admitted in Government Hospital and was treated by PW.2 - Dr. Ramulu, Orthopaedic Surgeon, and spent a sum of Rs.30,000/- towards treatment and became bedridden for quite sometime and, therefore, sought the aforesaid compensation from respondent Nos.1 and 2, who are the owner and insurer of the motorcycle, respectively.

5. The claim was strongly opposed by respondent No.2 contending that the policy does not cover the risk of the petitioner as he himself was driving the offending vehicle at the time of accident, which occurred due to his own negligence and, therefore, sought to dismiss the claim petition.

6. The Tribunal, having framed three issues and examined the petitioner himself as P.W.1 and one doctor by name Ramulu as PW.2 and marked Exs.A1 to A6 and Exs.X1 and X2 on behalf of the petitioner, and examined RW.1 and marked Exs.B1 and B2 on behalf of the respondents, and having analysed the evidence on record, held issue Nos.1 and 2 against the petitioner recording the finding that the petitioner, having driven the offending vehicle in a rash and negligent

manner, caused the accident and, therefore, cannot claim compensation for the wrong committed by himself. In that view of the matter, the compensation was not determined by the Tribunal.

7. Heard Sri P.Radhive Reddy, learned counsel for the appellant, and Smt. Kalpana Ekbote, learned counsel for respondent No.2 – New India Assurance Company Limited. Though, respondent No.1 was served with notice, none appears for him.

8. The finding recorded by the Tribunal is based on appreciation of evidence on record. Since the very foundation laid by the petitioner to claim compensation was basing on the wrong committed by him and the fact situation would clearly reflect that while he was driving the motorcycle, in an attempt to control the speed of the vehicle, he dashed the cyclist, it is sufficient to cull out the negligence on his part, in which case he is, certainly, not entitled to claim compensation from respondent Nos.1 and 2, more particularly, when he examined Dr.Ramulu as P.W.2, against whom comments have been made by this Court as well as the Tribunal in other cases, which has been taken note of by this Court, and still more particularly, when it is forthcoming that the cyclist referred to in the present case also filed a claim petition in O.P.No.600 of 1998 against the petitioner-appellant herein and the insurer-respondent No.2 herein. Therefore, there is no merit in the present appeal.

9. The appeal is, therefore, dismissed, confirming the award and decree under challenge in all respects. There shall be no order as to costs.

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

JUSTICE A.SHANKAR NARAYANA

22.09.2016

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