

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**M.A.C.M.A. No.1853 OF 2009**

**JUDGMENT:**

The present appeal is preferred by the petitioner under Section 173 of the Motor Vehicles Act, 1988 ( for short 'the Act') aggrieved over the order and decree, dated 25-11-2008, in M.V.O.P. No.229 of 2006, on the file of the Motor Accident Claims Tribunal - cum - IV Additional District Judge, Guntur (for short 'the Tribunal') dismissing the claim petition against respondent No.2 - New India Assurance Company Limited while granting compensation of Rs.52,800/- against respondent No.1 alone with interest at 12% per annum as against the claim laid under Sections 140 and 163-A of the Act for Rs.1,00,000/-.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are owner and insurer of auto-rickshaw bearing registration No.AP 7X 8347, respectively, are respondents as such in MVOP before the Tribunal.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in MVOP.

4. The facts, in brief, are that on 26-09-2005, the petitioner while travelling in an auto-rickshaw bearing registration No.AP 7X 8347 driven by its driver in a rash and negligent manner at high speed, a buffalo said to have come across the road and when the

driver applied sudden brakes it resulted in the auto-rickshaw turning upside down, due to which, the petitioner sustained fracture to right shoulder, both legs and right hand. Therefore, the petitioner sought a compensation of Rs.1,00,000/- against respondent Nos.1 and 2, being owner and insurer of the auto-rickshaw.

5. Respondent No.1, owner of the vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.2, its insurer, filed counter opposing the claim.

7. The Tribunal having framed three issues, examined PWs.1 and 2 and marked Exs.A-1 to A-4 and also Ex.X-1, case sheet, on behalf of the petitioner. RW.1 was examined and Exs.B-1 to B-8 were marked on behalf of respondent No.2.

8. Though, on issue No.1 the Tribunal recorded a finding that the accident did occur due to rash and negligent driving by the driver of the auto-rickshaw, on issue No.2 while awarding a compensation of Rs.52,800/-, dismissed the claim against respondent No.2 - Insurer by fixing entire liability on respondent No.1, owner of the vehicle, recording a finding that the owner of the vehicle himself was the driver and that he was not having valid and effective driving license and, therefore, insurer is not liable to pay any compensation.

9. Aggrieved over the said dismissal order against the insurer, the petitioner preferred the present appeal contending that the Tribunal has not properly appreciated the evidence on record and, therefore, sought to allow the appeal.

10. Heard Sri N. Subba Rao, learned counsel for the appellant - petitioner, and Sri Kota Subba Rao, learned standing counsel for respondent No.2 - Insurer. Despite service of notice on respondent No.1, none appears for him.

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

12. In view of Exs.B-2, B-4 and B-8, admittedly, respondent No.1, owner-cum-driver, did not have any driving license. In fact, Ex.B-8, attested copy of case diary, Part-I, would show that respondent No.1 engaged one Thanneru Sambaiah, as driver and on the date of accident, the driver taken the vehicle to Tenali and then respondent No.1 took the vehicle and coming back as the driver appears to have overstayed there and picked up passengers and while he was driving himself, the accident took place near Vignan College.

13. Be that as it may, he neither produced any driving license at any point of time before the police, nor did he answer to Exs.B-2 and B-4, despite notices being sent to him by respondent No.2 - Insurer. Therefore, the finding recorded by the Tribunal is based on

appreciation of evidence on record and the probability derived basing on proved facts. Hence, the said finding cannot be upset. There is no merit in the appeal.

14. Hence, the appeal is dismissed. No order as to costs.

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

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**A. SHANKAR NARAYANA, J**

**September 12, 2016.**

Mgr

