

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.MA.No.16 OF 2009

JUDGMENT:

The present appeal is preferred by the petitioner – claimant in M.V.O.P.No.1441 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal – cum – VI Additional District Judge (III Fast Track Court), Warangal at Mahabubabad, aggrieved by the order and decree, dated 19.09.2008, passed in the said O.P., whereby and whereunder, the claim of the petitioner for award of Rs.5,00,000/- as compensation, under Section 166 (1) (a) of the Motor Vehicles Act, 1988, was dismissed *in limini* on the ground that, though, he claimed that he has sustained injuries in a road accident on 25.07.2004, he approached the Government Hospital on 27.07.2004, and informed the Doctor that he sustained the injuries on 26.07.2004, which was recorded in the Medical Certificate.

2. The appellant is the petitioner, whereas respondent No.1, owner of the vehicle that involved in the accident, is respondent No.1 and respondent Nos.2 and 3, Insurance Company represented by two different branches, are respondent Nos.2 and 3 in the O.P. before the Tribunal.

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

4. The brief facts of the case are that on 25.07.2004, while the petitioner was proceeding on his bi-cycle towards Naikpally Village and reached near Vampu Kaluva in the outskirts of the said Village at about 03:30 PM, a Hero Honda motorcycle bearing registration No.AP-36-L-1662, coming in opposite direction driven at high speed in a rash and negligent manner dashed the bi-cycle of the petitioner, due to which, he fell down and sustained fracture to right leg, left hand, left shoulder and injury to left knee joint. He was shifted to Government Hospital, Narsampet and from there, he was referred to M.G.M. Hospital, Warangal, where, he claims that he had undergone treatment from 27.07.2004 to 22.08.2004 and undergone surgical intervention. Thereafter, he got treated himself in Sri Ganesh Hospital, Hanamkonda. The concerned Station House Officer, registered a crime against the driver of the motor cycle. Stating that he incurred Rs.50,000/- towards medical charges and he is unable to fold the legs, squat freely, lift weights with his left hand and sustained permanent disability, sought a sum of Rs.5,00,000/- as compensation from respondent Nos.1 to 3, who are the owner and Insurance Company represented by its two different branches.

5. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent Nos.2 and 3 filed common counter opposing the claim requiring the petitioner to prove that he

got treated in Sri Ganesh Hospital under Dr. P. Surender Reddy and according to them, the Certificate issued by the said Doctor is a fake Certificate and this case is also included in the list of C.B.C.I.D. cases.

6. Basing on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed three issues. During enquiry, the petitioner examined three Doctors besides examining himself as PW.1 and marked Exs.A1 to A8 besides getting marked Ex.C1 – case sheet. On behalf of the respondents, no witnesses were examined and no documents were marked.

7. Aggrieved by the dismissal of the claim petition, the petitioner has preferred the present appeal contending in the grounds, that the Tribunal was wrong in dismissing his claim petition on the sole ground that there was delay in lodging the report with the police concerned. It is also stated that after receiving the injuries, the petitioner was immediately shifted to the Hospital for treatment and the doctors, who examined him, have categorically stated that the petitioner received injuries in the accident. The petitioner further stated in the grounds that the police, after registration of crime, investigated into the matter and filed the charge sheet and that he suffered disability, but the Tribunal overlooked all these facts and circumstances and dismissed the claim petition on wrong assumption and, therefore, sought to set aside the award and decree.

8. Heard Sri A.Prabhakar Rao, learned counsel for the petitioner (appellant), and Sri Somanchi Venkateswarlu, learned counsel for respondent No.3 – Insurance Company. Though, service was completed on respondent Nos.1 and 2, none appears for them.

9. At the outset, it has to be observed that though, the petitioner examined three doctors, still, the Tribunal, advertent to the plea made by respondent No.3 – Insurance Company that Dr.P.Surender Reddy, who maintains a private Hospital viz., Ganesh Hospital, issued fake injury certificate and that the injury certificate issued in the instant case is also included in the list of C.B.C.I.D. cases being investigated by C.B.C.I.D., and also taking into consideration the delay in reporting the matter with the police and referring the petitioner to Government Hospital, Narsampet, initially, and from there to M.G.M. Hospital, Warangal, expressed doubt and, thereby, dismissed the claim petition itself.

10. Without entering into the arena of merits, since none of the prosecution witnesses who conducted the investigation were examined, it is desirable to set aside the order and decree passed in the present O.P and remand the matter to the Tribunal for fresh disposal, after affording an opportunity to both sides to adduce further necessary evidence. Further, since the O.P relates to the year 2006

and the accident said to have taken place in the year 2004, it would be appropriate to direct the Tribunal to dispose of the O.P within six months from the date of receipt of a copy of this order.

11. Accordingly, the appeal is allowed setting aside the order and decree dated 19.09.2008 in M.V.O.P.No.1441 of 2006 passed by the Tribunal and remanding the matter to the Tribunal to dispose of the said O.P as indicated above, within the time stipulated.

12. Miscellaneous applications, if any pending in the instant appeal, shall stand closed. No order as to costs.

**JUSTICE A.SHANKAR
NARAYANA**

01.08.2016
MD/v v