

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A No. 1596 OF 2009

JUDGMENT:

The petitioner in M.V.O.P.No.419 of 2002 on the file of the Chairman, Motor Accident Claims Tribunal – cum – VI Additional District Judge (Fast Track Court), Tirupati (for brevity ‘the Tribunal’) preferred the present appeal challenging the order and decree dated 10.01.2007 passed in the said M.V.O.P.

2. For the sake of convenience, the parties are referred to as arrayed in the O.P. before the Tribunal.

3. The fact-situation would reflect that the petitioner, who was aged about 30 years at the time of accident, was doing vegetable business earning Rs.6,000/- per month. On 07.02.2001 at about 7.00 p.m, the petitioner was proceeding with his friend on a Caliber Motorcycle bearing Registration No.AP 03/2319, as a pillion rider, to Piler and at about 2.45 p.m., when they reached near 32 K.M. stone and tried to overtake a bus, the RTC bus bearing Registration No. AP 10/Z 5776, which was coming in opposite direction driven by its driver in a rash and negligent manner, hit the motorcycle, due to which, the petitioner and his friend sustained injuries. Immediately, they were shifted to SVRR Hospital, Tirupati, and from there, to Saint John’s Medical College Hospital, Chennai, for better treatment. The petitioner, claiming that he has spent more than Rs.1,00,000/- towards medical expenses, sought a sum of Rs.3,00,000/- towards compensation under Section 166 (1)(a) of the Motor Vehicles Act,

1988, from the erstwhile Andhra Pradesh State Road Transport Corporation (for short 'the Corporation').

4. The Corporation opposed the claim by filing a detailed counter.

5. The Tribunal, on the basis of the pleadings, framed three issues about responsibility for the accident.

6. During the course of enquiry, P.Ws.1 to 3 were examined and Exs.A.1 to A.5 were marked on behalf of the petitioner. On behalf of the respondent, R.W.1 was examined, but no documentary evidence was let in.

7. The Tribunal, having deliberated on both the issues, so far as negligence aspect is concerned, since R.W.1, who was the driver of the RTC bus, which hit the two wheeler of the petitioner, was not cross-examined, opined that the assertions made by R.W.1 would stand unchallenged and unrebutted and thus, disproves both negligence as well as entitlement to compensation putforth by the petitioner and thereby, dismissed the claim petition on that sole ground.

8. The petitioner challenged the same in the instant appeal raising various grounds mainly contending that though, P.Ws.1 to 3 and Exs.A.1 to A.5 would outweigh the evidence of R.W.1, the findings recorded and conclusion arrived at by the Tribunal are erroneous and thereby, sought to allow the appeal by setting aside the order and decree and also determining the compensation to which the petitioner is entitled.

9. Heard Sri C. Srinivas, learned counsel for the appellant.

10. Though, notice was served on the respondent, none appears for it.

11. Learned counsel for the appellant, during the course of arguments, placed reliance on the decision of the Delhi High Court in *New India Assurance Company Limited v. Harsh Mishra and others*¹. He places emphasis on the observations in paragraphs 11 to 15 of the said judgment, wherein the rulings rendered by the Hon'ble Supreme Court referred to are almost akin to the fact situation occurring in the instant case. Therefore, this is a fit case to remand the matter to the Tribunal directing it to give an opportunity to the parties to lead further evidence and to afford an opportunity to the appellant to cross-examine R.W.1 to determine the compensation irrespective of the result in the claim petition and dispose of the same in accordance with law, within a period of six months from the date of receipt of a copy of this judgment.

12. Accordingly, the appeal is allowed setting aside the order and decree dated 10.01.2007 in M.V.OP.No.419 of 2002. No order as to costs.

13. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

A. SHANKAR NARAYANA, J

Date: 27.09.2016

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¹ 2015 (3) ACC 435