HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

<u>M.A.C.M.A. No.3428 OF 2005</u>

<u>JUDGMENT</u>:

Aggrieved by the order dated 28.10.2005 in M.O.P. No.1023 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IX Additional District Judge, Visakhapatnam (for short, 'the Tribunal'), whereby and whereunder, an amount of Rs.1,48,500/- was granted as compensation with interest at 7.5% per annum from the date of petition till date of realization, as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by the petitioner in a road accident, fastening liability on the driver and owner of the accident vehicle while exonerating respondent No.3-Insurance Company from its liability, the instant appeal is preferred under Section 173 of the Act.

2. The appellant herein is the petitioner, while respondent Nos.1 to 3 herein, who are the driver, owner and insurer of tanker bearing registration No.AP 31V 114, respectively, are respondent Nos.1 to 3, 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 on 27.02.2002 at about 1-50 p.m., when the petitioner was standing near Sabbavaram complex, a tanker bearing registration No.AP 31V 114 came in a rash and negligent manner at high speed and dashed him, due to which, he sustained injuries. Claiming that he suffered with disability and loss of earnings by reason of disability, sought a sum of Rs.1,50,000/- as compensation from respondent Nos.1 to 3, who are driver, owner and insurer of the accident vehicle.

5. Respondent Nos.1 and 2, being the driver and owner of the accident vehicle, remained *ex parte*. Respondent No.3-insurer opposed the claim by filing counter. Since it is relevant for the purpose of adjudicating the controversy, the plea taken by the Insurance Company in paragraph No.4 of its counter is extracted, which is thus:

> "The petitioner was instrumental in the occurrence of the accident as he suddenly crossed the road without giving any indication of his intent and thus contributed to the cause of the accident and the R-1 was never rash and negligent in his driving. The petitioner cannot take advantage of his wrongful act and stake claim for compensation from the respondents."

Besides the said plea as regards manner in which the accident had taken place, several other pleas were raised, which are of any significance in deciding the controversy herein.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

> "1. Whether the accident occurred due to the rash and negligent driving of the lorry bearing No.AP21 V 114 driven by its driver?
>
> 2. Whether the petitioner is entitled for compensation, if so, from which of the Respondents?
>
> 3. To what relief ?"

7. During enquiry, the petitioner examined himself as P.W.1 besides examining two doctors as P.Ws.2 and 3, who treated him, and marked Exs.A.1 to A.11 to substantiate his claim; whereas, on behalf of respondent No.3, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

8. On issue No.1, the Tribunal basing on the recitals in Ex.A.1-copy of F.I.R., held that respondent No.1-driver of the tanker was responsible for causing the accident. On issue No.2, the Tribunal discarded Exs.A.9 and A.11 on the premise that P.Ws.2 and 3 were not competent persons to speak about the contents therein, but however, granted Rs.1,33,280/- under the head “permanent disability and loss of earning power”, which

terms are, in fact, interrelated and, thus, granted a total sum of Rs.1,48,500/-, which includes Rs.10,000/- towards pain and suffering, Rs.3,000/- towards extra nourishment and medicines and Rs.2,000/- towards transport charges. Then, the Tribunal went on discussing the evidence, more particularly, contents of Ex.A.1, since they show that the petitioner while trying to climb the tanker while it was moving, slipped and sustained injuries and, therefore, the same amounts to violation of terms and conditions of the insurance policy and, thus, exonerated respondent No.3-Insurance Company from its liability. The Tribunal has also observed that the vehicle was goods vehicle and the petitioner was not supposed to travel in the goods vehicle. Precisely, these were the reasons why the Tribunal declined to fasten liability on respondent No.3-Insurance Company.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the evidence of P.W.1 remains unchallenged as to the manner in which the accident had occurred and the Tribunal was not justified in disbelieving the evidence of P.W.1 and that the Tribunal ought not to have relied on Ex.A.1-F.I.R., which was given by some other person, but not by the claimant, more particularly, in the absence of examination of the person who has made F.I.R. and, therefore, sought to set aside the order to the extent of absolving the liability of respondent No.3-Insurance

Company.

10. Heard Sri G. Rama Gopal, learned counsel for the appellant-petitioner, and Sri R.K.Suri, learned Standing Counsel for respondent No.3-Insurance Company. Though, served with notice, none appears for respondent No.1. Appeal was dismissed against respondent No.2 by the order dated 06.01.2012, which is of no consequence as he suffered decree passed by the Tribunal.

11. As seen from the grounds of appeal, the only ground agitated by the appellant-petitioner is that the Tribunal went wrong in recording finding basing on Ex.A.1-F.I.R. exonerating respondent No.3-Insurance Company from its liability in the absence of examination of author of the F.I.R.

12. Learned counsel for the petitioner would submit that the stand of the petitioner has been that he was waiting at the bus stage for bus, during which time, the accident vehicle came and hit him and the contents of the F.I.R. are incorrect and the person who authored the F.I.R. was not examined by respondent No.3-Insurance Company and, therefore, that finding recorded by the Tribunal is liable to be set aside, more particularly, when the Insurance Company in its counter taken altogether a different stand stating that while the petitioner was

crossing the road, the accident was occurred and the petitioner was negligent while crossing the road without observing the vehicles that were passing on and, further more, the suggestions got made by respondent No.3-Insurance Company to P.W.1 during his cross-examination through its Standing Counsel.

13. Admittedly, the author of Ex.A.1-F.I.R. was not examined by respondent No.3-Insurance Company on its behalf in order to prove the contents therein, though, it was filed by the petitioner. A perusal of the counter filed by respondent No.3-Insurance Company would reflect that it has taken the stand that the petitioner was instrumental in the occurrence of the accident as he suddenly crossed the road without giving any indication and contributed the cause of accident. What was mentioned by respondent No.3-Insurance Company has been extracted in the above. Besides the same, when P.W.1 was cross-examined by the Standing Counsel for respondent No.3-Insurance Company, a suggestion was made to him showing the plea taken in the counter, suggesting that the accident had taken place due to his negligence in crossing the road suddenly without observing the vehicles passing on the road, which was bluntly denied by him. In such an event, the Tribunal was not right in exonerating respondent No.3-Insurance Company just basing on the contents of the F.I.R. and in the absence of examining the author thereof. Hence, that

finding recorded by the Tribunal is liable to be set aside, as it is tainted with illegality accounting for improper appreciation of evidence on record and, accordingly, respondent Nos.1 to 3 are jointly and severally liable to pay the compensation.

14. So far as determination of compensation is concerned, the petitioner has not chosen to question the same, as the claim was made for Rs.1,50,000/- and the Tribunal has arrived at Rs.1,48,500/- and granted the same with interest at 7.5% per annum thereon. Therefore, to the extent of granting a sum of Rs.1,48,500/- as compensation, the impugned order is confirmed.

15. Accordingly, the instant appeal is allowed setting aside the impugned order to the extent of dismissal of claim petition against respondent No.3-Insurance Company and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

4th February, 2016

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