

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A.C.M.A. No.1024 OF 2005

JUDGMENT:

The petitioner - claimant, who is the present appellant, aggrieved by the order and decree, dated 18-01-2005, dismissing her claim petition in O.P. No.116 of 1999 by the learned Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge (Fast Track Court), Nizamabad, preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), requesting to grant a sum of Rs.1,00,000/- under Section 166(a) of the Motor Vehicles Act, 1988 read with Rule 455 of the Andhra Pradesh Motor Vehicle Rules, 1989.

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.AP-25-T-4317 that involved in the accident are respondent Nos.1 and 2 respectively.

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

4. The facts, in brief, are that on 15.01.1999, while

the petitioner was travelling in a Jeep bearing No.AP-25-T-5661 from Nizamabad to Indalwai, at about 12.30 noon, when it reached near Dichpally village on Hyderabad to Nagpur Highway, a lorry bearing No.AP-25-T-4317 driven in rash and negligent manner at high speed, came in opposite direction and hit the Jeep, due to which, she sustained fractures to back bone, left hand bone and other injuries to head and all over her person. She claims that she was admitted in Government Head Quarters Hospital, Nizamabad, treated by Dr. L. Ramulu and Dr. T. Narsing Rao, Orthopaedic Surgeons, and continued treatment even on the date of filing of claim petition and spent Rs.40,000/- towards treatment and, therefore, sought Rs.1,00,000/- from respondent Nos.1 and 2.

5. Respondent No.1 filed written statement contending that the driver of the Jeep was not holding valid and subsisting driving licence to drive the Jeep at the relevant time and that driver of the lorry was holding valid and subsisting driving licence to drive the lorry insured with respondent No.2, insurer, vide insurance policy No.3424 and sought to dismiss the claim petition against him.

6. Respondent No.2, insurer of the lorry involved in the accident, resisted the claim denying the nature of injuries sustained by the petitioner and other allegations

levelled in the claim petition. Even denied the petitioner being taken to Government Head Quarters Hospital for treatment and stated that the claim is bad for non-joinder of driver, owner and insurer of the Jeep that involved in the accident and that if at all the petitioner is entitled to any compensation, the same is to be allowed against respondent No.1 but not against it as there were violation of terms and conditions of the insurance policy, and, thus, sought to dismiss the claim petition against it.

7. Based on the pleadings, the Tribunal framed three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

8. During enquiry, petitioner, besides examining herself as PW.1, examined PWs.2 to 4 and marked Exs.A-1 to A-4. On behalf of the respondents, no oral or documentary evidence was adduced.

9(a) The Tribunal, having meticulously examined the evidence adduced by the petitioner and having found that, though, the evidence of PW.2 shows that the petitioner has sustained head injury and fracture of left radius bone, but Ex.A-2 certificate shows, in addition to fracture of left radius bone, that she sustained injuries to spinal cord and fracture of skull bones and observed that if really petitioner sustained spinal cord injury as shown in Ex.A-2 certificate, PW.2, who examined her on the very

same day of issuing Ex.A-2, should have noticed the same and thus, there is inconsistency between the medical certificate filed by the petitioner and the evidence of PW.2 as regards the injuries said to have sustained by her.

(b) The Tribunal also observed that the petitioner has not filed any injury certificate from the Government Head Quarters Hospital, Nizamabad, or from the Hospital of Dr. Bhoopath Reddy, as she asserted that she took treatment in that hospital having been initially treated in Government Head Quarters Hospital, Nizamabad, and, therefore, disbelieved the case of the petitioner.

(c) The Tribunal further observing that the petitioner has taken any steps to call for the case sheet from the Government Hospital or Bhoopati Reddy Hospital and not offered explanation therefor and still, further observing that had the petitioner filed medical certificate issued by the Government Hospital, wherein, in the first instance, she was alleged to have admitted, it would have thrown more light on the issue, more particularly, when the contest of the respondents is that she did not sustain any injuries, disbelieved the claim of the petitioner.

(d) That apart, the Tribunal also found yet another deficiency being that the First Information Report does not contain the name of the petitioner and for all these reasons, doubted the case of the petitioner that she

sustained injuries at all, and, thereby, dismissed the claim petition.

10. It is the aforesaid order, which is under challenge in the instant appeal contending in the grounds that the order and decree passed by the Tribunal is perverse and based on surmises and conjectures and that the Tribunal cannot find fault with the petitioner for not filing certified copy of the charge sheet and though, she sustained head injury, fracture to left radius and admitted in the hospital on 22.02.1999 and discharged on 24.03.1999 in PW.2's Nursing Home, the Tribunal was not right in disbelieving Ex.A-5, the evidence of PWs.1 and 2 and the disability certificate Ex.A-6, and, therefore, sought to set aside the order and decree under challenge and grant a sum of Rs.1,00,000/- as compensation.

11. From a careful reading of the order and perusal of material on record, it is true, the finding recorded by the Tribunal that the name of the petitioner is not at all finding place in the F.I.R. is absolutely correct and even the same is fairly conceded by the learned counsel for the appellant. In fact, the medical certificate filed by the appellant, if relates to the certificate issued by P.W.2 against whom comments were made by this court in other matter touching credibility, which however, unnecessary to refer to, and the finding recorded by the Tribunal that the petitioner failed to submit the medical

record from Dr. Bhoopathi Reddy-Hospital and even the record from the Government Headquarters Hospital, Nizamabad and, therefore, the claim is not proved cannot be upset. Hence, there is no merit in the instant appeal.

12. Appeal is, therefore, dismissed confirming the order and decree under challenge in all respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

29th March, 2016

PV/siva