

THE HON'BLE SMT. JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL NO. 3913 OF 2004

JUDGMENT:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 21.06.2004 passed by the Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad, O.P.No.1032 of 2001, dismissing the petition.

2. The claimant filed the above O.P under Section 166 of the Act, claiming compensation of Rs.2,50,000/- on account of the injuries sustained by him in a motor vehicle accident.

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

4. The brief averments made in the petition are that the petitioner is doing toddy business and earning Rs.4,000/- per month. On 07.04.2001 at about 10.45 a.m., while the petitioner and others were proceeding in a Van bearing No.AP9T 0417 along with toddy cases towards Malapur from Kodicharla and when they reached the outskirts of Timmapur village in front of ETA factory on the National Highway No.7, one lorry, having 24 wheels, bearing No.AP11T 8292, which was carrying a coal machine came in a rash and negligent manner and dashed the van, as a result of which the

petitioner along with others sustained grievous injuries besides fractures and the driver by name P.Balraj died on the spot. Immediately, the petitioner and other persons were shifted to Shadnagar Government Hospital. The police, Kottur P.S. registered the same as a case in Crime No.48 of 2001. According to the petitioner, the accident occurred due to rash and negligent driving of the driver of the lorry.

The petitioner stated that in the accident he sustained fracture on right hand and also sustained head injury and other injuries all over the body, thereby he confined to bed. He spent more than Rs.1 lakh towards medical expenses and is still undergoing treatment by private doctors. Due to the injuries, the prospectus of the petitioner in his work is badly affected and the petitioner and his family members are put to great hardship and mental agony. Therefore, the petitioner prayed the Court to grant compensation against both the respondents who are jointly and severally liable to pay the same.

5. The first respondent remained *ex parte* before the Tribunal.

6. The brief averments made in the counter filed by the second respondents are as follows:

The respondent put the petitioner to prove the manner of accident, age and income of the petitioner besides

sustaining of injuries. The respondent also stated that the driver of the offending vehicle did not possess valid and effective driving licence, the vehicle was not roadworthy to ply and it was running without a valid and effective permit as on the date of accident. The liability of the respondent to pay compensation to the petitioner does not arise as the first respondent committed breach of the terms and conditions of the policy, and finally prayed the Court to dismiss the petition.

7. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner himself examined as PW1 and got marked Exs.A.1 to A.4. On behalf of the second respondent, no oral evidence was adduced, but got marked Ex.B.1 copy of insurance policy.

8. The Tribunal, after considering the oral and documentary evidence, dismissed the petition. Aggrieved by the order of the Tribunal, the petitioner filed the present appeal.

9. The learned counsel for the appellant/petitioner argued that the petitioner received injuries in the accident and his name was wrongly mentioned in the complaint given by a co-passenger and actually he is B.Raj Kumar S/o.B.Sadanandam but not Pindi Raj Kumar S/o.Ramdas. The learned counsel further argued that in the accident, the

petitioner suffered grievous injuries, but the Tribunal without considering all the aspects dismissed the petition and the said order has to be set aside, and finally argued that the petitioner is entitled to compensation from the respondents.

10. On the other hand, the learned counsel for the second respondent argued that the Tribunal after considering the oral and documentary evidence rightly dismissed the petition filed by the petitioner on the ground that the petitioner failed to prove that he is the person who received injuries in the accident. It is further argued that there is no independent evidence produced by the petitioner. It is further argued that the Tribunal having observed that the petitioner failed to examine the doctor or any other witness to prove the injuries received by him in the accident, rightly dismissed the petition and the said finding of the Tribunal needs no interference, and prayed the Court to dismiss the appeal.

11. Having regard to the submissions made by both the learned counsel, the only point that arises for consideration is:

Whether the appellant/petitioner has made out any case to set aside the order dated 21.06.2004 passed by the Tribunal?

12. **Point:**

A perusal of the evidence of PW1 shows that on 07.04.2001 at about 10.45 a.m., he along with others while

proceeding in a Van bearing No.AP9T 0417 and when it reached the outskirts of Timmapur village on NH7, a lorry bearing No.AP11T 8292, carrying a coal machine, was driven by its driver in a rash and negligent manner and dashed the van, due to which the driver of the van died on the spot and the petitioner and others sustained injuries. The police registered a case against the driver of the offending lorry. The petitioner filed Exs.A.1 to A.3 – certified copies of FIR, Charge sheet and MVI report along with Ex.A.4 discharge summary.

13. In the cross-examination, PW1 admitted that his name was shown in FIR and also in Charge sheet as Pindi Raj Kumar S/o. Ramdas, whereas his actual name is B.Raj Kumar S/o. B.Sadanandam and in the re-examination he clarified all these facts. However, the Tribunal after considering the evidence of PW1 rightly held that mere clarification given by PW1 in his re-examination cannot establish his contention in the absence of any other steps taken by him to rectify the errors committed as alleged by him. Further, it is also not proved by examining the doctor that he received injuries in the same accident occurred on 07.04.2001. Therefore, the factual aspects regarding the name of the petitioner, nature of injuries and the nature of treatment taken by the petitioner, were not proved. Therefore, the Tribunal rightly dismissed the petition and the finding of the Tribunal in this regard needs no interference.

14. The appeal is, accordingly, dismissed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

30.08.2016
Anr



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