

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1217 OF 2009

JUDGMENT:

The unsuccessful petitioner-claimant in M.V.O.P. No.270 of 2006 is the appellant. Challenging the dismissal order and decree, dated 04.08.2008, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, East Godavari District at Amalapuram, the instant Civil Miscellaneous Appeal is preferred requesting to set aside the same and grant compensation of Rs.1,00,000/- for the injuries said to have sustained by the petitioner in a road accident on 12.04.2006 at about 8.30 a.m. at Brahmanacheruvu.

2. Heard Smt. Anula, learned counsel for the petitioner (appellant) and Sri N.S. Bhaskara Rao, learned counsel for the insurer (respondent No.3).

3. Despite service of notice, none appears for respondent Nos.1 and 2, driver and owner, respectively, of the auto-rickshaw bearing No.AP-5-V-8029 that involved in the accident.

4. The Tribunal has framed three (3) issues in order to fix liability in taking place of the accident and to determine compensation to which the petitioner is entitled.

5. A perusal of the order under challenge, pleadings and the evidence, both oral and documentary, on record, would reveal that the

petitioner, when he laid the claim, projected the fact-situation that on 12.04.2006, he sustained injuries when he was travelling in a goods auto-rickshaw bearing No.AP-5-V-8029, having boarded it at Brahmana Cheruvu Katrinikona at 8.30 a.m., to return to his house at Vetlapalem, and when it reached Brahmana Cheruvu, since driver of the auto-rickshaw drove it in a rash and negligent manner and was unable to control speed of the vehicle, the auto-rickshaw turned upside down resulting in injuries to him (petitioner) and other co-passengers.

6. The petitioner, subsequently came up with an application to amend the factual aspect by deleting the manner in which the accident had taken place as projected by him and to substitute the same with the fact-situation that he sustained injuries while he was going on bicycle, and the said auto-rickshaw came in the opposite direction and hit his cycle, resulting in his fall and sustaining injuries, and, attributed rash and negligent driving to the driver of the auto-rickshaw. He stated that he became unconscious and regained consciousness ten (10) days after the accident and he was examined by the police four (4) days after the accident and he did not make any statement before the police. Thus, these facts have been asserted by him in his evidence.

7. Opposing the claim of the petitioner, respondent No.3 - insurance company filed counter complaining violation of terms and conditions of the insurance policy and taking a specific plea that the

petitioner was an unauthorised passenger in a goods auto-rickshaw and, therefore, no liability can be fastened on it; besides agitating the ground that respondent No.1, driver of the auto-rickshaw, did not hold valid and effective driving licence to drive the transport vehicle at the relevant time.

8. The Tribunal has observed under issue No.1, that the petitioner was shifted to Government Hospital, Mummidivaram, and the hospital authorities have sent intimation to the police about admission of the petitioner, on which, the Sub-Inspector of Police, Katrinikona Police Station, went to the hospital and recorded statement of the petitioner at 10.30 a.m., wherein he stated that he boarded the auto-rickshaw to go to the house of his employer, from his (petitioner) house, towards Vetlapalem, and near brahmana Cheruvu, the auto-rickshaw turned upside down due to rash and negligent driving of the driver of the auto-rickshaw, and, thus, he sustained injuries.

9. Perused the order and decree under challenge and verified the original record.

10. On perusal of the claim petition filed by the petitioner, it is clear that the petitioner introduced the amendment altering the very manner in which the accident projected by him earlier and only to get over the fundamental violation of the insurance policy conditions introduced the amendment stating that he was actually proceeding on

his bicycle and at that time, the goods auto-rickshaw came in the opposite direction and hit him.

11. The Tribunal, therefore, having discussed the effect of the amendment made by the petitioner, disbelieved the manner in which the accident alleged to have occurred as projected by him in the subsequent amendment and observing that there was inconsistency in the initial stand taken by the petitioner with that of the stand he has taken subsequently, dismissed the claim petition.

12. The petitioner's attempt was deliberate. It appears, having realized that, in case, the original stand he has taken that he was travelling in a goods auto-rickshaw was continued, he would be construed as an unauthorized passenger travelling in a goods vehicle and would not get any compensation, got the claim petition amended and introduced an altogether different stand stating that he was riding a bicycle at the time when the accident took place and sustained injuries. Certainly, he cannot get over the Medico Legal Case Record maintained at the time of preparing the relevant case sheet in the Medico Legal Case Register. Hence, the Tribunal rightly dismissed the claim petition.

13. Thus, there is no merit in the instant appeal and the same is, therefore, dismissed confirming the order and decree under challenge. There shall be no order as to costs.

14. As a sequel thereto, Miscellaneous Petitions, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

August 5, 2016.

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