

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1793 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellant – petitioner, aggrieved by the order and decree dated 23.12.2008, passed in M.V.O.P.No.252 of 2004 by the Chairman, Motor Accidents Claims Tribunal-cum-IX Additional District Judge (FTC), Guntur District (for brevity "the Tribunal"), awarding compensation of Rs.26,015/-, as against the claim of Rs.61,118-16 ps., laid by him under Sections 163-A and 160 of the Act and Rules 455 and 476 of A.P. Motor Vehicle Rules, 1989 for the damages caused to his Auto Rickshaw bearing No.AP 7X 3761 in a motor vehicle accident that occurred on 05.03.2003.

2. The appellant herein is petitioner, respondent No.1 herein, who is owner of Lorry bearing No.AP 16U 7559 is respondent No.1, respondent No.2 – National Insurance Company Limited, who is its insurer, is respondent No.2, and respondent No.3 – United India Assurance Company Limited, who is the insurer of Auto Rickshaw bearing No.AP 7X 3761 belonging to the appellant, is respondent No.3 in M.V.O.P.No.252 of 2004. For the sake of convenience, the parties are referred to as they were arrayed in the above M.V.O.P.No.252 of 2004 before the Tribunal.

3. Heard Sri B. Parameswara Rao, learned counsel for the appellant - petitioner, Sri T. Ramulu, learned Standing Counsel for respondent No.2, and Sri N.S. Bhaskar Rao, learned Standing Counsel for respondent No.3.

4. A perusal of the order under challenge would show that the said order was not rendered by appreciating evidence on record in proper perspective. The Tribunal went wrong on the following aspects:

(i) The Tribunal has not given cogent reasons as to why the claim petition was dismissed against respondent No.3, who is the insurer of the damaged Auto Rickshaw belonging to the petitioner;

(ii) The Tribunal has not examined, whether the petitioner is really the owner of damaged Auto Rickshaw bearing No.AP 7X 3761, since the Registration Certificate of the said Auto, which alone is the crucial document to prove ownership of the Auto, was neither furnished nor exhibited, but, somehow, went under the assumption that the Auto belongs to the petitioner himself;

(iii) The Tribunal has not insisted on a copy of Insurance Policy of the offending Lorry bearing No.AP 16U 7559 belonging to the 1st respondent and insured with 2nd respondent, and without copy of Insurance Policy being filed, either by the petitioner or by the 2nd respondent, but the Tribunal has adjudicated upon the issue and fastened liability on the 2nd respondent - insurer.

5. Further, R.Ws.1 and 2, who are working as Senior Assistant and Junior Assistant, respectively, in the 3rd respondent Insurance Company, have spoken to about the

petitioner not holding a valid driving licence at the relevant time. Thus, on behalf of the 2nd respondent, no witnesses were examined and no documents were filed. The Tribunal has not recorded any concrete finding as to how it has fastened liability on 2nd respondent – National Insurance Company Limited as well as 1st respondent - owner of the lorry, jointly and severally.

6. To accede to the request of the petitioner for enhancement of compensation, the Insurance Policy issued by the 2nd respondent is of great importance, so also the Registration Certificate of the Auto belonging to the petitioner. In the absence of these two vital documents, it is difficult to determine the compensation in the instant appeal.

7. Therefore, there is no other option, except to dismiss the appeal as devoid of merits, confirming the order dated 23.12.2008 passed by the Tribunal.

8. Accordingly, the Civil Miscellaneous Appeal is dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE A. SHANKAR NARAYANA

22.09.2016.
Msr

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1793 of 2009



22.09.2016
Msr