

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

MACMA No.326 of 2005

JUDGMENT:

This is a Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for short) by the petitioner/claimant against the Award dated 06.10.2004 of the learned Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge, Nizamabad, ('the Tribunal', for short) made in O.P.No.31 of 2003.

2. I have heard the submissions of the learned counsel for the appellant/claimant ('the claimant', for brevity) and the learned counsel appearing for the 2nd respondent-The New India Assurance Co., Ltd. The appeal against the 1st respondent is dismissed for default. I have perused the material record.

3. The appellant, who is an injured claimant, had filed the claim petition before the Tribunal claiming compensation for the injuries sustained and the disability suffered on account of his involvement in a motor vehicle accident on 04.09.2002 at about 03:30 P.M., which had occurred when the auto bearing registration No .AP 25 U 1126 in which he, along with some others, was travelling to go to Nizamabad had capsized on account of its driver's rash and negligent driving when he tried

to over take the RTC bus. The 2nd respondent insurance company having filed a counter had resisted the claim of the claimant. The owner of the vehicle had remained *ex parte*. On merits, the Tribunal had dismissed the claim petition. Aggrieved of the said award/order, the claimant had preferred this appeal.

4. The learned counsel for the claimant would submit that the Tribunal, having held that the accident had occurred due to the rash and negligent driving of the driver of the vehicle in which the claimant was travelling, had erroneously dismissed the petition holding that the claimant did not take any steps to summon the case-sheet from the Government Hospital, Nizamabad and that no X-Ray films are filed in support of his claim and that he is guilty of suppression of facts. He, therefore, would submit that the order impugned is liable to be set aside.

5. The learned counsel for the 2nd respondent Insurance Company would submit that several claim petitions were filed by the persons involved in the same accident and that in an appeal preferred by one such claimant, this Court had remanded the matter to the Tribunal for *de novo* consideration and that in this appeal also if a similar order remanding the matter to the Tribunal is passed, ends of justice would be met.

6. In the order impugned the Tribunal had specifically framed an issue as to 'Whether the accident has taken place due to the rash and negligent driving of the driver of the vehicle bearing no. AP-25-U-1126 by its driver?' and had answered the

said issue in favour of the claimant holding that the accident had occurred due to the rash and negligent driving of the driver of the auto. But, while answering the other issues viz., 'Whether the petitioner is entitled for compensation?; If so, to what just amount and against whom?' the Tribunal had observed in the orders impugned that the claimant failed to make a request to send for the case-sheet from Government Headquarters Hospital, Nizamabad to prove that he was treated there and that PW2/the Doctor, under whom the claimant took treatment, had also stated in his evidence that he issued exhibit A3-wound certificate without obtaining any X-rays and that the claimant also did not file any X-rays to prove that he had sustained fracture injuries and that he also did not file any prescriptions issued by PW2 or medical bills to prove that he had incurred some expenditure or spent some amount on his treatment and that therefore, the claimant suppressed the real facts. The Tribunal had finally held that the claimant is not entitled for any compensation. The Tribunal had failed to appreciate the evidence adduced by the claimant in the form of the copies of the FIR, the Charge Sheet and the Wound Certificate issued by the Civil Assistant Surgeon under exhibits A1 to A3. The Tribunal having held that the accident had occurred due to the rash and negligent driving of the driver of the auto, ought to have awarded some reasonable compensation after taking into consideration the evidence brought on record. However, in the facts and circumstances, as rightly contended by the learned counsel for the 2nd respondent/Insurance Company, the matter

requires to be remitted to the Tribunal for *de novo* consideration of the case in accordance with the procedure established by law. The said course gives a fair opportunity to both the sides and helps the Tribunal in arriving at a just decision as to the genuineness of the claim of the present claimant.

7. In view of the undisputed submissions and the fair concession by both the sides and for the reasons assigned, this Court holds that the matter requires to be remitted to the Tribunal.

8. Accordingly, the Appeal is allowed and the impugned award is set aside and the matter is remitted to the Tribunal for *de novo* trial and disposal afresh in accordance with the procedure established by law. It is made clear that the Tribunal shall also give an opportunity to the claimant to produce further evidence, if any, if the claimant so desires. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

04.03.2016

Vjl