

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1985 OF 2005

JUDGMENT:

The appellant herein is the petitioner-claimant. He sought compensation of Rs.1,00,000/- by laying a claim under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') in O.P.No.490 of 1997 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District & Sessions Judge (Fast Track Court), Nizamabad (for short, 'the Tribunal'), on the ground that he sustained grievous injury in a road accident. Having got dissatisfied with the amount of Rs.3,000/- granted as compensation by the order dated 29.12.2003 in the said O.P., the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of the jeep bearing registration No.MH-26-5881, respectively, were respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 16.08.1996, when

the petitioner along with a pillion rider namely, Syed Ahmed, was proceeding on his two-wheeler (TVS Suzuki) bearing registration No.AP-25-4569 to Bodhan from Maharashtra side and reached the outskirts of Bodhan at 5.15 p.m., a jeep bearing registration No.MH-26-5881, driven in a rash and negligent manner, came on wrong side and dashed the two-wheeler, due to which, the petitioner sustained multiple injuries including a grievous injury. According to the petitioner, he was shifted to Government Hospital, Nizamabad and from there, he was shifted to the hospital of one Dr.Koulaiah for further treatment and spent Rs.25,000/- towards treatment. Claiming that he is an electrician and, subsequent to accident, he is unable to attend his regular electrician work having suffered disability, sought a sum of Rs.1,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the jeep, respectively.

5. Before the Tribunal, the claim was opposed by respondent No.2-Insurance Company. Respondent No.1 remained *ex parte*. In fact, respondent No.2 has projected clear collusion between respondent No.1 and the petitioner-claimant and ultimately sought to dismiss the claim petition against him.

6. The Tribunal has framed two issues in order to determine the liability as well as the compensation to which the petitioner is entitled. During enquiry, the petitioner

examined himself as P.W.1 and marked Exs.A1 to A8 to substantiate his claim, but has not examined the doctor. On behalf of respondent No.2, no witnesses were examined, but the copy of insurance certificate was marked as Ex.B.1.

7. The Tribunal, making elaborate discussion, favoured the petitioner as to the manner in which the accident had taken place, holding that the driver of the jeep bearing No.MH-26-5881 was responsible for taking place of the accident.

8. Concerning next part of issue No.1, the Tribunal, having deliberated on Ex.A3, holding that since the doctor was not examined, granted Rs.3,000/- towards simple injury, discarding the grievous injury projected by the petitioner not only because the doctor was not examined, but also there was no evidence worth the name to substantiate it. The Tribunal has granted interest at 9% per annum.

9. Heard Sri K.Sarala Mahender Reddy, learned counsel for the appellant, and Sri A.V.K.S.Prasad, learned Standing Counsel for respondent No.2-Insurance Company. Respondent No.1 refused to receive the notice. Hence, deemed it to have been served.

10. A perusal of Ex.A3 would show that it was only a requisition made to the Medical Officer Incharge, Government Hospital, Nizamabad, by the S.H.O., P.S. Bodhan, dated 18.08.1996. The other side of Ex.A3 is

totally blank without there being any indication about the injuries said to have sustained by the petitioner. However, a look at Ex.A4 would show that it is described as a discharge card issued by District Headquarters Hospital, Nizamabad, Department of Orthopaedics, manned by one Dr.L.Ramulu, M.S. (Ortho). He mentioned final diagnosis as contusion median end of the left clavicle with swelling and fracture of medial end of the clavicle, but strangely the petitioner has not chosen to examine the said Medical Officer. In fact, the very discharge card of the nature of Ex.A4 would not have arisen at all. Dr. L.Ramulu cannot issue such a discharge card projecting as if he was a doctor of District Headquarters Hospital of Nizamabad. The discharge card, which would be used by the District Headquarters Hospital, Nizamabad, would never contain the name of the doctor being printed. Therefore, Ex.A4 has to be excluded from the purview of appreciation of evidence.

11. The finding recorded by the Tribunal that Exs.A5 and A6 cannot be given credence is based on convincing reasons and, therefore, that finding cannot be disturbed. So, except blank Ex.A3, nothing else remains on record to substantiate that the petitioner sustained grievous injury. In that view of the matter, the amount of Rs.3,000/- with interest at 9% per annum granted as compensation by the Tribunal is confirmed.

12. The instant appeal is, therefore, dismissed confirming the order and decree passed by the Tribunal. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

15th July, 2016
v v