

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.1419 OF 2005

JUDGMENT:

Having got aggrieved with the order and decree, dated 28-10-2004, in O.P. No.1259 of 2001, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – VI Additional District Judge (Fast Track Court), Nizamabad (for short 'the Tribunal'), whereby and where-under while granting Rs.35,000/- as compensation as against the claim of Rs.1,50,000/- laid under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989, for the injuries sustained by the petitioner, exonerated the 2nd respondent – National Insurance Company Limited on the ground that the petitioner himself is the owner, who was riding pillion at the relevant time driven by respondent No.1, the instant appeal is preferred by the petitioner seeking to fasten liability by setting aside the order to that extent and also seeking enhancement.

2. The appellant herein, who is owner of Suzuki Samurai Motor Cycle bearing registration No.AP 25F 2980, is the petitioner in O.P. before the Tribunal, while respondent Nos.1 and 2, who are driver and insurer of the motor vehicle, respectively, are also arrayed as respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that on 15-09-2000, the petitioner, who is a doctor by profession, was riding the pillion on his Suzuki

Samurai motor cycle bearing registration No.AP 25F 2980 driven by respondent No.1 from Nizamabad to Mamidipalli, and when they reached bus stand at Mamidipalli at about 7.30 a.m., since respondent No.1 rode the motor cycle at high speed in a rash and negligent manner, he hit a girl by name Swathi from behind, due to that impact, the petitioner fell down and sustained injuries.

i) According to the petitioner, he received fracture injuries to his left hand and right eye-brow, forehead, left knee joint and other parts of his body. Immediately he was shifted to Government Headquarters Hospital, Nizamabad for treatment and, thereafter, shifted to a private hospital for further treatment.

ii) According to him, his motor cycle was also damaged in the accident causing loss of Rs.30,000/-. He was 32 years old; working as Medical Officer; earning Rs.8,640/- per month, and due to the accident; he became unfit to work and sustained permanent disability and loss of earnings and also incurred Rs.30,000/- towards medical expenses. Stating that since the motor cycle driven by respondent No.1 and the same was insured with respondent No.2, he sought to grant a sum of Rs.1,50,000/- as compensation against them.

5. Respondent No.1, rider of the vehicle, remained *ex parte*.

6. Respondent No.2 – Insurance Company filed counter opposing the claim. A specific plea was taken by it that the petitioner himself being the owner of the vehicle and the insurance policy not covering the risk of the owner, no liability can be fastened on it as no obligation is cast to indemnify the petitioner

and, therefore sought to dismiss the claim petition. The Insurance Company also raised other pleas and sought to grant liberty to raise defences available to insured in case such need arises.

7. Basing on the said pleadings, the Tribunal has framed three issues about the responsibility for the accident.

8. During inquiry, petitioner examined himself as PW.1 and marked Exs.A-1 to A-4 in order to substantiate his claim. On behalf of respondent No.2, an official from local branch was examined as RW.1 and marked Ex.B-1, which is copy of insurance policy of motor cycle.

9. On issue No.1, the Tribunal, on appraisal of evidence on record, held that due to rash and negligent driving of respondent No.1, the accident had occurred.

10. On issue No.2, the Tribunal having found that the petitioner sustained fracture of both bones of left hand and other three simple injuries on other parts of his person, granted Rs.10,000/- towards fracture of both bones of left hand; Rs.3,000/- towards simple injuries and Rs.10,000/- towards treatment, making a total of Rs.23,000/-, besides granting a sum of Rs.12,000/- towards 1½ months salary as the petitioner had to take bed rest and, thus, granted a total amount of Rs.35,000/- as compensation with interest at 9% per annum thereon from the date of petition till realization.

11. The Tribunal has tendered a finding as to liability of respondent No.1 holding that he is liable to pay compensation of Rs.35,000/- to the petitioner as the accident had occurred due to his rash and negligent driving. On respondent No.2's liability, the Tribunal having found from the evidence of RW.1 that risk of the

owner is not covered by the policy issued by it under Ex.B-1, declined to accede to that part of the relief and thereby dismissed the claim petition against respondent No.2, exonerating it from making any payment towards compensation to the petitioner.

12. It is the aforesaid order which is under challenge in the instant appeal by the petitioner seeking not only to enhance the compensation determined by the Tribunal, but also to fasten liability on respondent No.2 – Insurance Company on the ground that the accident vehicle was insured with it and, therefore, sought to allow the appeal.

13. Heard Sri M. Rajamalla Reddy, learned counsel for the appellant – petitioner, and Mrs. S.N. Padmini, learned Standing Counsel for respondent No.2 – Insurance Company. Despite service of notice on respondent No.1, none appears.

14. Perused the order under challenge and the evidence on record, both, oral and documentary let in by the parties.

15. The short point that arises for consideration is:

Whether the request of petitioner for fastening liability on Insurance Company and to enhance the compensation can be acceded to?

16. So far as ownership of the accident vehicle is concerned, it is not in dispute that the petitioner is the owner of the accident vehicle i.e. Suzuki Samurai Motor Cycle bearing registration

No.AP 25F 2980. The petitioner being owner while riding pillion sustained injuries on account of the accident that had taken place, as narrated in the above.

17. A perusal of the evidence of RW.1 would show that risk

of the owner was not covered under insurance policy, Ex.B-1. In Ex.B-1, insurance policy, a clause has been incorporated as to persons or class of persons entitled to drive, which shows thus:

“Any person including the insured provided that the person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such licence. Provided also that a person holding an effecting learner’s licence may also drive the vehicle and such a person satisfies the requirement of rule no.3 of the Central Motor Vehicle Rule 1989.”

Though, it gives some sort of rider to the insured, that rider has been appended to it stating that one must hold an effective driving licence at the time of accident, and is not disqualified from holding or obtaining such license.

18. Turning to the instant case, though, respondent No.1 remained *ex parte*, the very manner in which the accident had occurred would reflect that respondent No.1 was driving the vehicle at the relevant time while petitioner was riding pillion. Certainly, an attempt ought to have been made by the petitioner to examine respondent No.1, or at least, to secure his licence. In which direction, no attempt at all was made by the petitioner. Thus, viewed from any angle, the finding recorded by the Tribunal holding that respondent No.2 is not liable to pay compensation to the petitioner does not warrant any interference. Even, in the absence of any challenge by respondent No.1, the finding recorded by the Tribunal against him does not warrant any interference.

19. The learned counsel for the petitioner also sought for enhancement of compensation. In the instant case, when the

owner himself is the insured, question of enhancement of compensation does not arise. Hence, there is no merit in the instant appeal.

20. Accordingly, the appeal is dismissed. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 12, 2016.

Mgr