

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.2042 OF 2005

JUDGMENT:

The unsuccessful claimant, who was minor aged 12 years on the date of accident, preferred the instant appeal, aggrieved by the order and decree, dated 07.06.2005, in O.P.No.1077 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal – cum – III Additional District Judge (Fast Track Court), Nizamabad, whereby and whereunder, the claim of the appellant seeking compensation of Rs.1,50,000/-, under Section 166 (1) (a) of the Motor Vehicles Act, 1988, was dismissed.

2. The appellant is the petitioner, whereas respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle, respectively, are respondent Nos.1 and 2 in the O.P. before the Tribunal.

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, while the petitioner was proceeding on foot along with her mother and when they reached Mamidipally Bus Stand at 07:30 PM, a motorcycle bearing registration No.AP-25-F-2980

driven at high speed in a rash and negligent manner came from behind and dashed her, due to which, she fell down and sustained fracture of both bones of the left hand and other multiple injuries to her person. Immediately, she was shifted to Government Headquarters Hospital, Nizamabad, and later, she was shifted to a private hospital. In fact, the pillion rider of the motorcycle also fell down and sustained injuries, according to the version of the petitioner. The petitioner, claiming that she was studying and earning Rs.1,000/- per month as milk vendor, laid claim for Rs.1,50,000/- through her natural father as next friend.

5. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 opposed the claim.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed three issues.

7. During enquiry, on behalf of the petitioner, PWs.1 and 2 were examined and marked Exs.A1 to A17 besides marking Ex.C1- case sheet to substantiate the claim laid. On behalf of respondent No.2, no oral evidence was let in, but Ex.B1 – Insurance Policy was marked on consent.

8. The Tribunal, on issue No.1, has recorded a finding in favour of the petitioner, but, however, on issue

No.2, while resorting to determination of compensation, on the ground that the petitioner's father was an employee and got reimbursement of the amount spent towards medical expenses and disbelieving the stand of the petitioner that she was studying as well as earning Rs.1,000/- per month as milk vendor, dismissed the claim petition.

9. Aggrieved by the same, the instant appeal is preferred contending in the grounds that the Tribunal went wrong in dismissing the claim petition ignoring Exs.A3, A5 to A17, despite the fact that the petitioner sustained fracture of both bones of the left hand and partial permanent disability and therefore, sought to grant the entire compensation claimed.

10. Heard Sri M. Rajamalla Reddy, learned counsel for the appellant. No representation on behalf of respondent No.2 – Insurance Company, when the matter is called. Though notice was sent to respondent No.1, as mentioned in the cause list, it was unserved, but, however, his presence is not necessary to adjudicate upon the controversy in the instant appeal, in view of the fact that the Insurance Company has not let in any evidence disputing the fact of coverage of insurance in case of accident to third party.

11. The ground on which the Tribunal has dismissed

the claim reflects that the Tribunal is not correct in its approach in deciding the controversy. The documentary evidence, Exs.A1 to A17, would show that, in fact, the petitioner was treated in Yashoda Hospital. Even if the disability claimed by the petitioner is excluded and the medical expenses incurred by the father of the petitioner are reimbursed, still, no amount is granted towards the injuries sustained, pain suffered, extra nourishment, transport charges and attendant charges, if any, incurred by the petitioner. When the issuance of the policy is not in dispute, certainly, the petitioner is entitled to these sums, which are to be paid either by the Insurance Company or by the owner of the offending vehicle, as the case may be, as they cannot escape joint and several liability.

12. So, keeping in view, the nature of injuries sustained by the petitioner, that being fracture of both bones of left hand, at the age of 12, certainly, she is entitled to a sum of Rs.30,000/- towards pain and suffering and the injuries sustained. Towards extra nourishment, she is entitled to Rs.10,000/-. Towards attendant charges and transport charges, she is entitled to Rs.5,000/-. Thus, the petitioner is entitled to a total sum of Rs.45,000/- and accordingly, the same is granted with interest at 7.5% per annum from the date of petition till realisation.

13. Accordingly, the instant appeal is allowed in part. There shall be no order as to costs.

14. As a sequel thereto, Miscellaneous Applications,
if any, pending in this appeal shall stand disposed of.

A. SHANKAR

NARAYANA, J

March 17, 2016.

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