

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1000 OF 2005

JUDGMENT:

The instant appeal is preferred by the claimant in M.V.O.P. No.468 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Warangal, challenging the order and decree, dated 02.12.2004, whereby and whereunder, his claim was rejected dismissing the claim petition in its entirety.

2. The petitioner's case is that on 27.11.2002, while he was travelling in an auto-rickshaw bearing No.AP-36-U-8593 from Warangal to Kazipet, when the said auto-rickshaw reached near Zoo-Park, driver of the auto-rickshaw driven it in a rash and negligent manner and hit a scooterist, who was coming in the opposite direction, who is petitioner in O.P. No.171 of 2004, due to which, the auto-rickshaw turned upside down, and the petitioner sustained injuries and he was treated in a hospital, and, therefore, he laid the claim for Rs.75,000/- under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicle Rules, 1989, for the injuries sustained by him.

3. Respondent No.1, owner of the auto-rickshaw that involved in the accident (insured), remained *ex parte*

before the Tribunal.

4. Respondent No.2, insurer of the auto-rickshaw involved in the accident, opposed the claim attributing collusion between the petitioner and the insured and states the very fact that the complaint was filed twenty (20) days after the accident substantiates it and, therefore, sought to dismiss the claim petition.

5. Based on the pleadings, the Tribunal framed three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

6. During enquiry, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A-1 to A-8 were marked. On behalf of the insurer, no oral evidence was adduced, but a copy of the insurance policy of the auto-rickshaw involved in the accident was marked as Ex.B-1.

7. All the three (3) issues were taken up together by the Tribunal. The Tribunal having scanned the evidence on record observing that none of the petitioners have informed the doctors about the injuries sustained by them and the discharge card Ex.A-4 does not indicate cause of injuries and observing that it is highly doubtful as no supporting evidence was placed as to taking place of accident and the petitioner sustaining injuries, dismissed the claim petition. In fact, the Tribunal dismissed three (3)

claim petitions by a common order laid by alleged two other passengers of the auto-rickshaw and the alleged scooterist.

8. Heard Sri A. Prabhakar Rao, learned counsel for the appellant-petitioner, and Sri G. Vishweswar Reddy, learned Standing Counsel for respondent No.2-Insurance Company. Appeal was dismissed against respondent No.1-owner for default by the order dated 03.01.2012. However, dismissal of the appeal for default against respondent No.1-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**^[1].

9. As the out rate, I am of the opinion that it would be proper to remit the matter to the Tribunal to afford an opportunity to the petitioner to lead further evidence by placing further material in case he was initially referred to the Government Hospital to produce the medical record from the Government Hospital and also afford an opportunity to the respondents in case they choose to adduce evidence. Keeping in view the fact that the accident relates to the year 2002 and the claim petition relates to the year 2003, the Tribunal is directed to dispose of the matter within six months from the date of receipt of copy of order.

10. Accordingly, the instant appeal is allowed setting aside the order and decree and remitting the matter to the Tribunal with the aforesaid direction. There shall be no order as to costs.

11. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

29th March, 2016

PV/siva

[\[1\]](#) 2001(1) ALT 495 (D.B.)