

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.3287 OF 2005

JUDGMENT:

The instant appeal is preferred by the petitioner in M.O.P. No.1487 of 2003 aggrieved by the order and decree therein, dated 30.08.2005, passed by the learned Chairman, Motor Vehicle Accidents Claims Tribunal - cum - VII Additional District Judge, Visakhapatnam (for short 'Tribunal'), whereby and whereunder, the Tribunal while awarding Rs.71,000/- as compensation as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, for the injuries sustained by the petitioner, dismissed the claim petition against respondent No.2, insurance company, and, therefore, sought to mulct liability on the insurer also granting the total claimed amount.

2. The appellant herein is the petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.AP-16-W-8516 are respondent Nos.1 and 2 respectively.

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

4. The facts would show that on 26.05.2003, the petitioner boarded a lorry bearing No.AP-16-W-8516 for travelling as fare-paid passenger, having paid Rs.35/-, and when the lorry reached Salapuvanipalem, at about 3.00 a.m., driver of the lorry drove it in a rash and negligent manner and hit a stationed Van bearing No.AP-35-T-277; in the accident, the petitioner and cleaner of the lorry sustained grievous injuries and even a person sitting in the van died on the spot. Immediately, the petitioner was shifted to Government Hospital, Anakapalli, and from there to K.G. Hospital, Visakhapatnam, where he was treated as inpatient till 26.06.2003. The right great toe of the petitioner was cut off and he sustained fracture to his left foot and right foot in addition to lacerations on the shoulders and left knee and spent Rs.25,000/- towards medical expenditure, and, therefore, sought to grant the aforesaid amount.

5. Respondent No.1, owner of the lorry that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the lorry involved in the accident, opposed the claim and strongly pleaded that the petitioner was an unauthorised passenger travelling in a goods vehicle and thus, there has been violation of terms and conditions of policy and, therefore, sought to dismiss the claim petition against it.

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

8. During enquiry, the petitioner examined himself as PW.1 and a private medical practitioner who assessed disability, as PW.2 and marked Exs.A-1 to A-8; whereas, on behalf of the insurer, an officer of its concerned branch was examined as RW.1 and marked Exs.B-1 to B-6.

9. On issue No.1, the Tribunal, having dealt with the evidence on record, held that the petitioner sustained injuries in the accident due to rash and negligent driving of the driver of the lorry of respondent No.1. On issue No.2, having dealt with elaborately, gave a definite finding as regards liability of respondent No.2, placing reliance on the decisions of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Asha Rani**^[1] and **National Insurance Company Limited v. Baljit Kaur and others**^[2], that the insurer cannot be made liable to pay compensation and having determined the same at Rs.71,000/- to which the petitioner entitled, dismissed the claim petition against respondent No.2, insurer of the lorry, and cast liability only on respondent No.1, owner of the

lorry, while granting interest at 9% per annum.

10. It is the aforesaid order which is under challenge in the instant appeal by the petitioner mainly on the ground that the insurer cannot be exonerated from payment of compensation and even the amount granted by the Tribunal was on lower side and, thus, sought to grant the entire amount by fastening liability on the insurer as well.

11. Heard Sri Jakka Ramakrishna, learned counsel for the petitioner (appellant), and Smt. Kalpana Ekbote, learned counsel for respondent No.2, insurer.

12. *Ex facie*, the fact situation would show that the petitioner was travelling as an unauthorised passenger in the lorry, which is a goods vehicle, and the same accounts for violation of terms and conditions of the insurance policy as held by the Hon'ble Supreme Court in **Asha Rani's Case** (Supra 1), **Baljit Kaur's Case** (Supra 2) and in **National Insurance Company Ltd. v. Bommithi Subbhayamma and others**^[3]. Therefore, the finding recorded by the Tribunal dismissing the claim petition against the insurer cannot be faulted as it is based on well settled principles of law laid down by the Hon'ble Supreme Court. So far as the amount of compensation is concerned, the Tribunal has granted Rs.71,000/- for the injuries sustained by the petitioner which were referred to

in the above, which is when examined in the light of the evidence on record, it is just and adequate and does not warrant any interference nor it would entitle the petitioner to seek enhancement.

13. Therefore, the Civil Miscellaneous Appeal is dismissed confirming the order and decree under challenge in all respects, as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

March 29, 2016.

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[\[1\]](#) (2003) 2 SCC 223

[\[2\]](#) 2004 ACJ 428 (SC)

[\[3\]](#) 2005 ACJ 721 (SC)