

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2246 of 2005

JUDGMENT :

The appellant/petitioner has filed the present Civil Miscellaneous Appeal, aggrieved by the judgment and decree dated 31.12.2003, passed in O.P.No.165 of 1999 by the Additional District Judge, Sanga Reddy, Medak District (for brevity "the Tribunal"), dismissing the claim made by him under Section 166 of the Motor Vehicles Act, 1988 (for brevity "the Act"), claiming compensation of Rs.50,000/- for the damages caused to his Hero Honda motor cycle bearing No.AP 23B 6159 in a motor accident that occurred on 13.12.1997.

2. The appellant is petitioner and the respondents are respondents in O.P.No.165 of 1999. For the sake of convenience, the parties herein are referred to as they are arrayed in the above O.P. before the Tribunal.

3. There is no need to refer the facts as the same are not in dispute.

4. Heard Sri K. Raji Reddy, learned counsel for the appellant/petitioner, and Sri G. Purushotham Rao, learned Standing Counsel for respondent No.2 – United India Insurance Company Limited. Though, respondent No.1 – owner of offending lorry is represented by a counsel, today there is no representation on his behalf. Perused the impugned judgment and the evidence on record.

5. By the aforesaid claim petition, the petitioner sought a sum

of Rs.50,000/- towards compensation for the damages caused to his vehicle i.e., Hero Honda bearing No.AP 23B 6159 on the ground that he incurred the said amount towards its repairs caused due to the accident.

6. Basing on the pleadings, the Tribunal framed three issues.

7. During enquiry, on behalf of the petitioner, besides examining himself as P.W.1, the petitioner got examined P.W.2, who is a mechanic; and P.W.3, who is none other than his brother, who was actually driving the Hero Honda, at the relevant time, and marked Exs.A.1 to A.4, which are certified copies of F.I.R., charge sheet, scene of offence and bills from Saibaba Motors at Zaheerabad, respectively; while on behalf of the 2nd respondent – insurer, none were examined, except marking Ex.B.1 – copy of the Insurance Policy.

8. The Tribunal, in fact, recorded a finding that the petitioner failed to prove Ex.A.4 – Bills from Saibaba Motors, stating that P.W.2 was not the author of those bills and he was said to be a Mechanic working in a different Mechanic shop. The Tribunal has also pointed out that what was stated by P.W.2 in his cross-examination completely contradicts the contents in the claim petition and thereby disbelieved the evidence of P.W.2 and dismissed the claim petition.

9. As could be seen from the evidence on record and the impugned order passed by the Tribunal, certainly, P.W.2 was not competent to speak about Ex.A.4 – Bills. The author, who issued Ex.A.4 – Bills, was not examined for the reasons best known to the petitioner. That apart, P.W.2 in his cross-examination states

that the bore, Corborator, Rackrams, packing kit, oil seal kit, engine oil replace, servicing charges were done, but contrary to the said statement, in the claim petition, it has been mentioned that the front show wheel set, lighting and colour and other parts were damaged. Thus, even when the evidence of P.W.2 is not supporting the case of the petitioner, there is no other option for this Court, except to dismiss the instant appeal, confirming the impugned order and decree dated 31.12.2003 passed by the Tribunal.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE A. SHANKAR NARAYANA

28.06.2016.

Msr

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