

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1705 of 2005

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by the appellant/petitioner aggrieved by the order and decree dated 17.06.2005 in O.P.No.958 of 1999 passed by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge (FTC), Adilabad District (for brevity "the Tribunal"), whereby and whereunder the claim made by him under Section 166 of the Motor Vehicles Act, 1988 against the 2nd respondent – New India Assurance Company Limited seeking compensation of Rs.1,00,000/- for the injuries sustained by him in a motor accident was dismissed.

2. The facts would show that on 13.07.1999 at about 9.30 p.m., while the appellant/petitioner was driving the auto rikshaw bearing No.AP1U-637 from Mancherial to Mulkalla village and when it reached near Indane Gas Godown, Mancherial, a lorry bearing No.AP9U-3767 came in opposite direction driven in a rash and negligent manner and dashed the auto, due to which the appellant/petitioner sustained grievous injuries along with several others. He was treated in a Government Hospital. He filed claim petition seeking a sum of Rs.1,00,000/- from respondent Nos.1 and 2, who are owner and insurer, respectively, of the offending lorry.

3. It appears that the claim petition was dismissed against the 1st respondent – owner of the lorry and no attempt was made to get the dismissal order set aside and the matter was allowed to be proceeded against the 2nd respondent – insurer, who filed counter.

4. Thus, a regular trial was held by examining the appellant/petitioner as P.W.1 and marking Exs.A.1 to A.14. No evidence was let on behalf of the 2nd respondent – insurer. After considering the evidence and the material on record, the Tribunal, while recording a finding in favour of the appellant/petitioner on Issue Nos.1 and 2, awarded a total compensation of Rs.28,000/-. However, dismissed the claim petition against 2nd respondent – insurer also on the main ground that in the absence of the owner of the offending lorry, who is the 1st respondent herein, the claim petition is not maintainable against the 2nd respondent – insurer also.

5. Challenging the above said order, the appellant/petitioner has preferred the present Civil Miscellaneous Appeal by raising various grounds.

6. Heard Sri S. Surender Reddy, learned counsel for the appellant/petitioner and Sri B. Devanand, learned Standing Counsel for the 2nd respondent – insurer. So far as the 1st respondent – owner of the lorry is concerned, this Court, by order dated 04.01.2012, while permitting the learned counsel for appellant/petitioner to take out personal notice on respondent

No.1, made an observation that in case the notice was sent to the same address that was furnished in the O.P., and if for any reason, it is not served, the Registry shall treat the same as served, once the proof as to taking out notice is filed and, in default, the appeal shall stand dismissed/abated, as the case may be.

7. The Memo filed by the appellant/petitioner would show that the notice was taken to the very same address of the 1st respondent that is mentioned in the cause title of O.P.No.958 of 1999 before the Tribunal. The Registry, somehow, omitted to record the directions issued by this Court on 04.01.2012 and printed an endorsement in the cause list to the effect that respondent No.1 was unserved. On the Memo filed vide USR.No.1132 of 2012 there ought to have been an endorsement under the 'office note' column in the proceeding sheet, indicating compliance of the order dated 04.01.2012. But, the Registry, somehow, omitted to record the same. Therefore, it is presumed that the notice was properly served.

8. Learned counsel for the appellant/petitioner, while placing reliance on a decision of this Court in ORIENTAL INSURANCE CO.LTD., ANANTAPUR v. Dr. M. MALLESAPPA (DIED) BY LRs. [\[1\]](#) in support of his submission that the request of the claimants to remand the matter to the Tribunal to enable them to implead the owner of the offending vehicle as a party to the proceedings was declined, while allowing the appeal, made an

attempt to distinguish the facts on the premise that in the above decision, the owner of the lorry was not at all impleaded, whereas in the instant case, the owner of the offending lorry was arrayed as 1st respondent, but, somehow, since steps were not taken to get the dismissal order set aside against the 1st respondent – owner, the liability on the insurance company was not fixed by dismissing the claim petition itself. He would further submit that in the claim petition being O.P.No.915 of 1999 filed by the legal representatives of the deceased, who died in the very same accident, the very same owner was arrayed as 1st respondent and remained exparte, the Tribunal had passed the award. In support of his submission, the learned counsel placed on record a certified copy of the order in O.P.No.915 of 1999, dated 17.06.2005. In fact, that order passed was on the very same owner, against whom the order under challenge was passed by the Tribunal. Had the Tribunal taken up joint trial of both the claim petitions, such issue as the one occurring now would not have arisen, thereby leading to dismissal of claim petition against the 2nd respondent – insurer, against which the instant appeal is preferred.

9. That apart, keeping in view, the fact that the facts in the said decision would differ from the facts in the present case and also keeping in view the fact that the Legislation is a beneficial legislation and since it is also not in dispute that the insurance policy was in force, on the date on which the accident had occurred, it is desirable to remand the matter to the Tribunal to enable the appellant/petitioner to take appropriate steps as

required under law to get the dismissal order set aside against the 1st respondent – owner of the offending lorry. In case, the appellant/petitioner takes appropriate steps for setting aside the dismissal order against 1st respondent – owner of the offending lorry, the Tribunal is directed to dispose of the matter, as expeditiously as possible, preferably within a period of six months from the date of filing such application to set aside the dismissal order.

10. Subject to the above direction, this Civil Miscellaneous Appeal is allowed, setting aside the impugned order and decree dated 17.06.2005 in O.P.No.958 of 1999. There shall be no order as to costs.

11. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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[\[1\]](#) 2007 (3) ALD 68