

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2659 OF 2004

JUDGMENT:

Aggrieved over the dismissal order in a claim petition for award of Rs.75,000/- towards compensation for injuries sustained by the petitioner in a road accident, the present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') against owner of the Scooter belonging to respondent No.1, on which the petitioner was admittedly pillion rider and insurer is respondent No.2.

2. The aforesaid order was passed on 12.11.1999 in M.V.O.P. 351 of 1997 by the Chairman, Principal Motor Accidents Claims Tribunal - cum - Principal District Judge, Warangal (for short 'Tribunal').

3. Appellant herein is the petitioner in the aforesaid M.V.O.P., while respondent Nos.1 and 2, who are owner and insurer of Scooter bearing registration No.AP 36B 9856, are respondents as such.

4. For the sake of convenience, the parties herein are referred to as they were arrayed in the MVOP.

5. The fact-situation since becomes relevant for adjudicating upon the claim laid by the petitioner, it is adverted to.

i) Respondent No.1 was riding the scooter, whereas the petitioner was riding the pillion on 13.02.1997. When they reached the house of Sarpanch of Arepally village at about 9.30 p.m., due to rash and negligent driving of respondent No.1, he dashed a pedestrian resulting in injuries to the pedestrian and also injuries to the petitioner - pillion rider. He was treated in M.G.M. Hospital. According to him, he lost consciousness and sustained right ankle fracture and, therefore, attributing negligence to the respondent No.1, sought to award the aforesaid sum from owner as well as insurer.

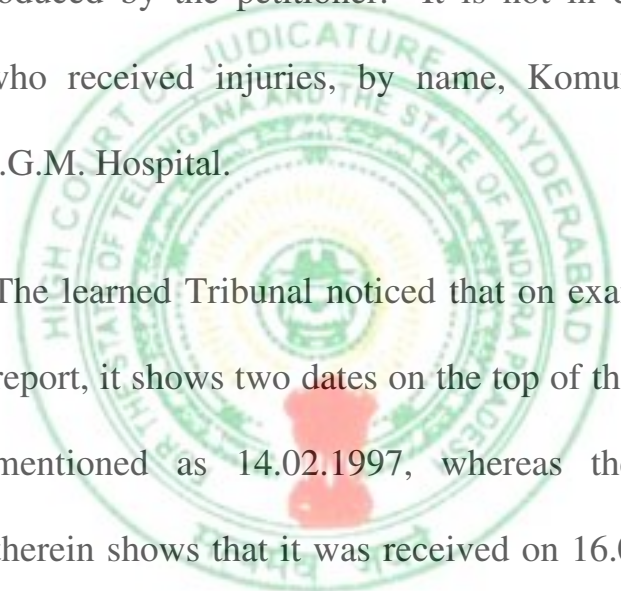
6. Respondent No.2 - Insurer alone filed counter resisting the request. Respondent No.1 though, entered appearance, has not contested the claim. The main ground agitated is that no intimation was given by respondent No.1, owner of the vehicle, as to taking place of the accident to it, and also stated that the policy number was not mentioned in the claim petition, and while raising various other pleas, it sought to dismiss the claim.

7. The Tribunal framed the following three issues.

1. Whether the accident took place due to rash or negligent driving by the driver of vehicle bearing No.AP-36-B-9856?
2. Whether the petitioner is entitled for the compensation of Rs.75,000/-? If so from which of the respondents?
3. To what relief?

8. In order to prove the claim, the petitioner examined himself as PW.1 and has not examined any other witness and marked Exs.A-1 to A-5. On behalf of respondent No.2 - Insurer, no-one was examined, but Photostat copy of insurance policy was marked as Ex.B-1 on consent.

9. The learned Tribunal, on appraisal of evidence of PW.1, noticed certain irreconcilable discrepancy or inconsistency in the certificate produced by the petitioner. It is not in dispute that the pedestrian, who received injuries, by name, Komuraiah was also referred to M.G.M. Hospital.

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- i) The learned Tribunal noticed that on examination of the report, it shows two dates on the top of the report; date is mentioned as 14.02.1997, whereas the endorsement therein shows that it was received on 16.02.1997 at 9.30 a.m. This has been the first inconsistency it noticed.
- ii) The second is, that the petitioner herein was working as Head Constable and he has not given any report to the police and he did not even inform about his admission in the hospital to the police or to his superiors and not attended duties on 14.02.1997, 15.02.1997 and 16.02.1997. Though, he being a police constable not lodging a complaint was construed by the learned

Tribunal as a suspicious feature, more particularly, when no explanation was offered by the petitioner for his failure to lodge a complaint.

- iii) The other circumstances noticed by the learned Tribunal are that the relevant details as to scooter number and the full address were all mentioned, but he did not explain as to how he could know the details and, thus, in the opinion of the learned Tribunal that these circumstances would create a doubt whether Ex.A-1 is a genuine report or not.
- iv) The learned Tribunal referred to yet another discrepancy. The requisition letter under Ex.A-2 sent by Sub-Inspector of Police referring the petitioner finds the date as 16.02.1997. The learned Tribunal has also extracted the relevant requisition portion. It shows that the Sub-Inspector of Police while referring the petitioner stated that the petitioner received injuries on 16.02.1997, and thereby requested the Medical Officer to examine and give report as to the nature of injuries. On this also, the learned Tribunal commented in the discussion and disbelieved the evidence of PW.1.
- v) The learned Tribunal also observed that the petitioner did not examine any other witnesses and, on the other hand, there was nothing on record to show that he was

unconscious after he had fallen down. The learned Tribunal also pointed out that though, the petitioner stated that he was treated in the hospital for 10 days as in-patient, but Ex.A-4 is not revealing the treatment he was provided.

These were all the circumstances basing on which the learned Tribunal dismissed the claim.

10. The same is now contested raising certain grounds in the present appeal. According to the appellant, learned Tribunal ought to have considered the contents of Exs.A-1 to A-5 and ought not to have rejected the claim and the learned Tribunal ought not to have opined that the delay in lodging the report will not defeat his case and ought to have considered the delay in filing the FIR.

11. Heard Sri A. Ravinder, learned counsel for the appellant and Sri Vutla Srinivasa Rao, learned standing counsel for respondent No.2 - Insurer.

12. The present appeal was dismissed against respondent No.1 on 05.11.2003. The learned counsel for the appellant sought to explain it away on the ground that the respondent No.1 did not contest the claim and dismissal of present appeal against respondent No.1 is not material, but that argument appears is misconceived. It is a case where claim itself was dismissed. In case the decree was passed partly

allowing the claim petition, awarding compensation and the owner of the vehicle remained *ex parte*, certainly, the argument advanced by the learned counsel for the appellant would merit acceptance. On that short ground itself, the appeal is liable to be dismissed. Besides the same, on perusal of the order, it cannot be said that the order is patently illegal. The observations made by the learned Tribunal cannot be side-lined as they are borne out by record. In fact, a duty is cast on the petitioner to explain away the suspicious features, if any, by examining the Medical Officer in within which direction, the petitioner completely failed.

13. This apart, when viewed the fact-situation, it is not as though that on account of rash and negligent driving of respondent No.1 - owner of the vehicle, though, the scooter hit a road side tree or went off the road and fell somewhere, resulting injuries to the pillion rider. In fact, the third party, who is the pedestrian, was hit by respondent No.1 while the petitioner was riding pillion. In such an event, whether the claim itself is maintainable or not is not answered by the learned counsel for the appellant nor did the petitioner project anything in his claim petition that even in such circumstances he is entitled to compel the owner as well as insurer to pay compensation on the ground that the contract between the owner and insurer would obligate the insurer to indemnify the owner of the vehicle even

concerning the injuries he sustained. Therefore, it is to be held that there is no merit in the present appeal.

14. The present appeal is, therefore, dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in this appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 16, 2017.

Mgr

