

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.2424 OF 2004

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') seeking enhancement of compensation, aggrieved over the order and decree in O.P. No.1294 of 2002, dated 5.4.2004, on the file of IV-Additional Chief Judge-cum-MVAT-CCC, Hyderabad, (for short, 'the Tribunal') awarding compensation of Rs.25,000/- against Rs.1,30,000/-, on the ground that the amount granted was totally inadequate and the Tribunal went wrong in granting Rs.25,000/- under no fault liability as per Section 140 of the Act though the respondents are saddled with fault liability.

2. Heard Sri Pasham Krishna Reddy, the learned counsel for the appellant, and perused the material available on record. No representation for the respondents.

3. Before the tribunal, the petitioner's next friend, who is no other than his father, was examined as P.W.1 and the Dental Surgeon, (Doctor), who treated the petitioner, was examined as P.W.2, apart from marking documents, Exs.A1 to A8. On behalf of the respondents, Ex.B1 copy of policy was marked and no oral evidence was adduced.

4. The tribunal below, on the ground that the petitioner failed to examine eye witness, refused to accept the evidence of P.W.1 in regard to rash and negligent driving attributed to the driver of seven seater auto, of course, documentary evidence would show that the driver of auto was shown as accused concerning the said accident. Thus, the Tribunal only viewed from the angle of no fault liability in the absence of evidence of an eye witness and perhaps viewing that the petitioner himself did not step into witness box, though, he was minor and competent to give evidence.

5. The learned counsel would submit that the evidence on record would *suffice* to convert no fault liability into fault liability and to determine compensation.

6. There are two reasons which compel this Court to remit the matter. Firstly, the petitioner was not incompetent to step into witness box, though, he was 14 years old at the time of accident. Section 118 of the Indian Evidence Act, 1872 does not lay any embargo in that regard, on account of the same the Tribunal was constrained to convert fault liability into no fault liability. The same can be obviated if the petitioner steps into witness box and depose as P.W.3 now by way of leading additional evidence.

7. Second is, the medical bills, numbering 22, were not testified by examining any of the witnesses from Anurag Hospital. The petitioner get deprived in case the said amount is refused, but

proof thereof is wanting, which can be rectified now, the legislation being beneficial one. That is also a ground to remit the matter to the tribunal. Yet another reason is that the petitioner/claimant sustained grievous injury to his leg. In that direction, the petitioner has not placed the material, and hence it is open to the petitioner to adduce evidence in that regard both, oral and documentary, in case if he so chooses.

8. Therefore, while setting aside the order passed by the Tribunal, which is under challenge in the instant Civil Miscellaneous Appeal, the matter is remitted to the Tribunal for consideration by granting liberty to both sides to lead further evidence. Since the claim relates to the year 2002, it is desirable to direct the Tribunal to dispose of the O.P. No.1294 of 2002 on his file within six weeks from the date of receipt of a copy of this order.

9. Accordingly, the present Civil Miscellaneous Appeal is allowed with the aforesaid directions.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 10.08.2017
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