HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.2794 OF 2003
AND
CROSS OBJECTION (SR) No.74218 OF 2003

COMMON JUDGMENT:

The present appeal is preferred by respondent No.2 - M/s. National Insurance Company Limited under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act'), questioning the order and decree, dated 20.03.2003, in O.P. No.551 of 2000, on the file of the Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Nalgonda (for short 'Tribunal'), whereby and where-under, an amount of Rs.1,75,000/- was granted as compensation as against the claim of Rs.6,00,000/- laid under Section 166 of the Act, with interest at 9% per annum from the date of petition till realization. Whereas, respondent No.1 in the appeal, who is petitioner in the aforesaid OP, filed Cross Objection (SR) No.74218 of 2003 for grant of balance amount on the ground that he was 28 years old on the date of accident and totally disabled, which is assessed at 100% and, therefore, ought to have calculated the compensation as if it was a case of death in terms of determination of compensation by applying multiplier '18' and award the compensation.

2. During pendency of the present appeal, respondent No.1 - Cross-objector died, and his legal representatives, who are mother and brother of the deceased, were brought on record.

3. Respondent No.2 herein and the appellant in the appeal, who are owner and insurer of DCM Van bearing registration No.AP 11U 3976, respectively, are respondent Nos.1 and 2 in the aforesaid O.P., while deceased respondent No.1 is the petitioner.

4. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the aforesaid O.P.

5. The deceased petitioner sets out his case that on 15.11.1999 he was driving the DCM Van bearing registration No.AP 11U 3976 owned by respondent No.1 and proceeding from Ramanthapur to Amberpet and when he reached near Nandeshwar Hair Dressing & Saloon, near Gandhi Statute, Amberpet at about 1.15 p.m., the said DCM van suddenly turned and hit the shutter of the Hair Dressing & Saloon due to mechanical defect, and as a result, he received fracture to his spine, grievous injuries to the legs and injuries all over his body. He was immediately shifted to Osmania General Hospital, Hyderabad, and from there he was referred to CDR Hospital, where he was treated as in-patient for about a week and, thereafter, joined in NIMS Hospital and, therefore, sought a compensation of Rs.6,00,000/- lakhs from respondent Nos.1 and 2.

6. Respondent No.1, owner of the vehicle, remained *ex parte* before the Tribunal.

7. Respondent No.2 - Insurer filed written statement requiring the deceased petitioner to prove the material allegations mentioned in

the petition. It has put forth a specific plea that the policy which was issued was got cancelled as the cheque issued by respondent No.2 was dishonoured and, therefore, there was no policy in existence when the accident took place. It has also informed respondent No.1 about the cancellation of the policy and, therefore, sought to dismiss the claim against it.

8. On the basis of the pleadings, the Tribunal framed the following three issues for trial:

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1. Whether the petitioner sustained injuries in the Motor Vehicle accident, and if so, whether the accident occurred due to rash and negligent driving by the driver of DCM bearing No.AP-11-U-3976?
2. Whether the petitioner is entitled to any compensation. If so, to what amount and by whom it should be paid?
3. To what relief?"

9. During inquiry, on behalf of the deceased petitioner, besides examining himself as PW.1, he has examined the doctor as PW.2 and marked Exs.A-1 to A-11, whereas, on behalf of respondent No.2, its local branch official-Assistant Divisional Officer was examined as RW.1 and marked Exs.B-1 to B-4.

10. On issue No.1, the Tribunal favoured the deceased petitioner recording a finding that the accident had occurred due to applying of sudden brake by the deceased petitioner. On issue No.1, the Tribunal holding that the insured paid the premium on 05.11.1999

and, thus, the payment was prior to taking place of accident on 15.11.1999, and relying on the ruling in **Oriental Insurance Company Limited v. Pinjary Hussainamma**[1] rendered by a Single Judge of this Court, held insurer is liable to pay compensation. The Tribunal determined the compensation of Rs.1,75,000, referring to the documentary evidence and the evidence of PWs.1 and 2, with interest at 9% per annum thereon.

11. Heard Sri Kota Subba Rao, learned standing counsel for the appellant - Insurer, and Sri A. Madhava Reddy, learned counsel for respondent Nos.3 and 4 - cross-objectors. The appeal against respondent No.2, owner of the vehicle, was dismissed by order, dated19.11.2015, and the same would not make any difference in deciding the controversy.

12. The learned counsel would submit that the accident occurred subsequent to intimation of cancellation of policy on the ground of dishonour of cheque issued by the deceased petitioner and it was dispatched on 12.11.1999 itself, whereas the accident occurred on 15.11.1999 and, therefore, insurer is not liable to pay any compensation, and the Tribunal went wrong in fastening liability on the Insurer. Second, even according to the case projected by the deceased petitioner, the accident occurred on account of his own negligence and, therefore, the Tribunal ought not to have recorded a

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[1]. 2002 ACJ 597

finding on issue No.1 in favour of the deceased petitioner as it is patently illegal.

13. The learned counsel for respondents - cross-objectors would submit that the findings recorded by the Tribunal cannot be upset as they were based on proper appreciation of evidence on record. But, however, the amount awarded by the Tribunal was very meager and, therefore, sought to grant balance amount.

14. The main ground urged by the deceased petitioner in taking place of accident was mechanical defect of the vehicle. It is not forthcoming whether there was any report submitted by the Motor Vehicles' Inspector having inspected the vehicle. None of the parties did concentrate on the said aspect of the case. The entire claim rests on whether the accident did occur on account of mechanical defect as claimed by the deceased petitioner. Second, whether the intimation sent to respondent No.1 - owner of the vehicle by respondent No.2 - Insurer as to the cancellation of policy on account of dishonour of the cheque issued by respondent No.1 was received before the accident did take place. No direct answers have been finding place in the order under challenge. In fact, definite and positive finding ought to be recorded by the Tribunal when material allegations are levelled and specific denial has been made by the opposite party. Therefore, it is a fit case where matter requires to be remitted for tendering findings on these two aspects.

CROSS OBJECTION (SR) No.74218 OF 2003

15. In view of the order remitting the matter to the Tribunal, the Cross-Objection is closed.

16. In the result, the appeal is allowed and the order and decree, date 20.03.2003 passed by the Tribunal in O.P. No.551 of 2000 are set aside remitting the matter to the Tribunal with a direction to give opportunity to either party if they so choose to examine further witnesses and to file further documents to prove their respective cases projected in their pleadings. Since the claim relates to the year 2000, the Tribunal is directed to dispose of O.P. No.551 of 2000 within six (6) months from the date of receipt of a copy of the order. It is also observed that in case any amount is deposited by the Insurer and withdrawn by the deceased petitioner or his legal representatives, the Tribunal may pass appropriate orders depending on the result of the claim petition, whereas, Cross Objection (SR) No.74218 of 2003 is closed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in these appeals, stand disposed of.

A. SHANKAR NARAYANA, J

October 23, 2017.
Mgr