HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A.No.2177 OF 2004

JUDGMENT:

The main ground on which the present appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is preferred happens to be that the learned Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Chittoor, while disposing of M.V.O.P.No.488 of 1998 by his order, dated 24.11.2003, dismissed the claim petition so far as respondent No.2 – Oriental Insurance Company Limited is concerned, which action had aggrieved the petitioner.

2. The appellant is petitioner, whereas respondent Nos.1 and 2 – who are the owner and insurer of the offending lorry that involved in the accident, are respondent Nos.1 and 2, respectively, in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The petitioner claimed a compensation of Rs.2,00,000/-, under Section 166 of the Act, on the ground that while, she along with her husband was proceeding on foot on 06.03.1998 at about 07:00 AM, though, on extreme left side of Chittoor – Cuddapah road, a lorry bearing registration No.AP-04-T-4866 coming from Chittoor driven at high speed in a rash and negligent manner hit her, due to

which, she fell down and sustained injuries and the lorry went off the road and turned upside down. She was immediately shifted to S.V.R.R. Hospital, Tirupati. For two months, she had undergone treatment as inpatient and, according to her, she was unconscious for a period of one month and police concerned also registered a crime. These have been the relevant facts. Even, the petitioner claimed that she became unsound and as such, her husband has filed the claim petition.

5. Respondent No.1 – owner of the offending lorry remained *ex parte* before the Tribunal.

6. Respondent No.2 – insurer raised various contentions and, ultimately, sought to dismiss the claim petition.

7. Basing on the said pleadings, the Tribunal has framed the following two issues for determination:

> "i) Whether the accident was caused due to the rash and negligent driving of the lorry bearing No.A.P.04/T/4866 by it's driver?
>
> ii) Whether the petitioner is entitled for any compensation? if so, to what quantum and from whom?"

8. During the course of trial, on behalf of the petitioner, the next friend of the petitioner was examined as PW.1, One A. Sudhakara Rao, who issued Disability Certificate, marked as Ex.A3, was examined as PW.2 and Dr. P.L. Jayachandra Reddy, who examined

the petitioner and issued Disability Certificate, marked as Ex.A4, was examined as PW.3 and Exs.A1 to A6 were marked. On behalf of respondent No.2, no evidence, either, oral or documentary, was let in.

9. The petitioner, though, favoured on issue No.1, but, when it came to issue No.2, having taken note of the fact that the petitioner suffered head injury, defective vision to right eye and she was also suffering from frontal compound depressed (R) fracture with right optic nerve injury, basing on the Medical Certificate issued by S.V.R.R. Hospital, Tirupati, marked as Ex.A2, and taking note of the medical bills and examining the same, arrived at a sum of Rs.2,00,000/- as compensation, to which the petitioner is entitled. However, concerning liability of respondent No.2, on the ground that the petitioner has not indicated the policy number against relevant coloumn in the claim petition and the petitioner's husband, who has given evidence as PW.1, did not assert in examination-in-chief that the offending lorry belonging to respondent No.1 was insured with respondent No.2, dismissed the claim petition against respondent No.2.

10. It is the aforesaid order which is under challenge in the present appeal on the main ground that the Tribunal ought to have fastened liability on respondent No.2 – insurer also.

11. Heard Sri S.V. Muni Reddy, learned counsel for the appellant, and Smt. Pushpinder Kaur, learned counsel for respondent No.2.

12. The present appeal is dismissed against respondent No.1 for default vide Court order, dated 19.11.2015.

13. Substantially, the submission of the learned counsel for appellant has been that the Tribunal, somehow, overlooked the fact that, though, no evidence at all was let in by respondent No.2 – insurance company to prove that the risk of the appellant was not covered and no policy was issued, still, it exonerated respondent No.2 from liability.

14. The main ground basing on which respondent No.2 – insurance company was exonerated from liability by the Tribunal happens to be that the appellant atleast did not furnish policy number and PW.1 – husband of the injured appellant did not assert that the offending lorry was insured with respondent No.2. On that ground, the liability was not saddled.

15. In fact, on a perusal of the original claim petition, it is clear that the name of the Oriental Insurance Company was mentioned against the relevant coloumn, though, not the policy number. On occasions, it will be too difficult for the claimants to mention policy number, as they stand on the footing of third parties. When once the

claim petition indicates that respondent No.2 was the insurer of the offending vehicle, merely on the ground that the policy number was not mentioned by the appellant, the Tribunal could not have dismissed the claim petition against respondent No.2, when evaluating crucial aspects of the case that being respondent No.2 pleaded before the Tribunal, by way of counter, requiring the appellant to prove that the offending vehicle was insured with it, and cannot carry away by such a recital, by thrusting responsibility or onus on the claimants. In fact, respondent No.2 is bound to step into witness box and assert the plea put forth in the counter and when the same is not done, the plea taken by respondent No.2 in his counter remains as a plea alone, without there being any proof. It is not as though rebuttal is sought for on the respondents' side, but, in fact, something must be on record on behalf of respondent No.2 by way of examining local branch officer that the accident vehicle was not insured with it. The finding recorded by the Tribunal that the entire burden rests on the appellant – claimant to prove that the offending vehicle was covered by valid insurance policy is contrary to the settled legal principles. In fact, the entire onus to prove the fundamental violation or that the risk is not covered, as no policy was issued, rests on respondent No.2. In that direction, no evidence at all was let in. In that view of the matter, the Tribunal went wrong in exonerating the insurance company from liability on mere ground that the appellant did not mention the policy number in the claim petition. Therefore, that finding recorded by the Tribunal appears to be patently illegal and liable to be set aside and accordingly, withheld.

16. The result is that the request made in the present appeal is to be acceded to and accordingly, acceded to fixing joint and several liability on respondent No.2 – insurance company even, while maintaining the order under challenge in all other respects, including the compensation determined by the Tribunal.

17. The appeal is, thus, allowed. Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

October 10, 2017.
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