

HON'BLE SRI JUSTICE M.S.K.JAI SWAL

M.A.C.M.A.No.1216 of 2010

JUDGMENT:

This appeal is preferred by the injured questioning the order of the learned Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge (FTC), Nizamabad at Kamareddy (for short "the Tribunal"), dated 13.06.2006, whereby, the claim petition of the appellant/injured was dismissed.

The case of the appellant/injured is that on 10.06.2000 when she was traveling in a Jeep bearing registration No.AP23-A8877 from Nizamabad to Kamareddy, the Jeep met with an accident due to rash and negligent driving of its driver, as a result, she sustained a fracture to the skull, multiple and grievous injuries all over the body. The other inmates of the Jeep also sustained injuries. She was taken to the Government Hospital where she was treated as inpatient and she also took treatment in a private hospital and spent Rs.45,000/- towards medical expenses. Therefore, she filed the claim petition, claiming compensation of Rs.1,00,000/- The appellant/injured is hale and healthy prior to the accident and she was an agriculturist and also doing vegetable business and earning Rs.8,000/- to Rs.10,000/- per month.

On behalf of the insurance company, its liability is denied on the ground that the offending vehicle is not insured, that no premium is paid to cover the risk of the passengers and there is violation of terms and conditions of the policy and hence the insurance company is not liable to pay compensation.

Perusal of the record shows that when the claim petition is called upon to prove her case, the appellant/injured filed chief affidavit, but thereafter, even though several adjournments were given, she has not made herself

available for being cross examined by the respondents and therefore, the chief affidavit filed by the appellant/injured was eschewed from consideration and the claim petition was dismissed as there is no evidence in support of the claim of the appellant/claimant.

The learned counsel for the appellant submits that since the claimant sustained serious injuries, she was not able to attend the court and hence the MVOP came to be dismissed. The learned counsel submits that if one chance is afforded to the appellant/claim petitioner, she will appear before the Tribunal and adduce her evidence in support of her claim.

The learned counsel for the respondents opposed the said request.

The appellant/injured is a lady, who is aged about 40 years and she sustained fracture to her skull and other injuries in the accident. It is no doubt true that there are laches on the part of the injured in not attending the Tribunal when she was required to appear for being cross examined by the respondents in the MVOP.

However, in view of the circumstances stated now, I feel that it is a fit case where the matter needs to be remanded to the Tribunal below for disposal of MVOP afresh, after affording one opportunity to the appellant/claim petitioner to make herself available before the Tribunal for being cross examined by the respondents. If the appellant/claim petitioner fails to appear before the Tribunal below on the date given, the Tribunal below is at liberty to dispose of the MVOP on the basis of the existing material.

In view of the above, the MACMA is allowed, the order of the Tribunal, dated 13.06.2006 is set aside, the matter is remanded back to the Tribunal below with a direction to dispose of the MVOP afresh, within a period of 2 (two) months from the date of receipt of a copy of this order along with

records, after giving one opportunity to the appellant/claim petitioner to make herself available for being cross examined by the respondents. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

M.S.K.JAI SWAL, J

Date: 13th June, 2017
Dsr

Note:

Registry is directed to transmit the record and the order forthwith to the Tribunal below.

B/o
Dsr

