

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.2289 OF 2004

JUDGMENT:

The claimant in O.P. No.82 of 1998 is the present appellant. Aggrieved over the dismissal order, dated 03.01.2003, on the file of the Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Medak District at Sangareddy (for short 'Tribunal') in its entirety, he preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act').

2. The appellant herein is the claimant in the aforesaid O.P., while respondent Nos.1 and 2, who are insurer and owner of lorry bearing registration No.KA 38 1109 and respondent Nos.3 and 4, who are owner and insurer of lorry bearing registration No.ADT 8000, respectively, are arrayed as respondents as such.

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

4. The claimant laid the claim seeking compensation of Rs.65,000/- under Section 166 of the Act for the injuries he sustained. While he was driving a lorry bearing registration No.ADT 8000 on 06.07.1997 proceeding on the road from Shankarampet to Hyderabad and when reached Bodamatpally and Muslapur village, a lorry bearing registration No.KA 38 1109 came in opposite direction driven in a rash and negligent manner and hit his lorry, due to which, he sustained

fracture of tibia, fracture of right hand brachialis and injuries on sternum and iliac bone.

i) His case, as set out in the petition, is that he was actually driving the lorry, whereas his father - Shaik Khaja, one Shaik Sadat, Cleaner and one Shaik Jhanimiya, owner of Jawari Choppa, which was loaded in the lorry, were all travelling when the accident took place.

5. Respondent No.1, which is the insurer of opposite lorry bearing registration No.KA 38 1109, and respondent No.2, owner of the said lorry, filed their counters, denying the manner in which the accident occurred as projected by the claimant. On the other hand, they attributed rash and negligent driving to the claimant himself, stating that the claimant contributed to the accident and, therefore, sought to exonerate them.

6. Respondent No.4, insurer of the lorry, which the claimant was driving at the relevant time, filed counter disputing all material allegations requiring the claimant to prove that he holds valid subsisting driving license at the relevant time and that the lorry was covered by insurance policy and also to prove the injuries.

7. Respondent No.3, owner of the lorry, which the claimant driving, remained *ex parte* before the Tribunal.

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

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1. Whether the claimant proved the accident dt.6-7-1997 committed by the driver of R.2 and the vehicle of R.2 was insured with R.1 during the relevant period?
2. Whether the claimant is entitled for compensation as claimed for?
3. To what relief? ”

9. In order to prove his claim, the claimant examined himself as PW.1 and marked Exs.A-1 to A-9, and no other witnesses were examined. On behalf of respondents, Ex.B-1 was filed which is copy of insurance policy, but no oral evidence was let in.

10. The Tribunal on material allegations did not agree with the claimant for the reason that the evidence let in by the claimant through himself as PW.1 is in complete variance with the plea he has put forth in the claim petition. Firstly, the Tribunal observed that in the claim petition, the claimant has mentioned that he was actually driving the lorry bearing registration No.ADT 8000, whereas his father - Shaik Khaja, Cleaner Shaik Sadath and owner of Jawari Choppa - Shaik Jhanimiya were sitting in the lorry. But, in his evidence, he asserted that his father was driving the lorry but not himself. Since there is inconsistency on the material aspects of the case, the Tribunal

disbelieved the claim itself. The second reason why the Tribunal dismissed the claim petition is, that the claimant failed to file his driving license, nor did he file the driving license of his father, though, he asserted that his father was actually driving the lorry. These are the main grounds, basing on which the Tribunal did not believe the evidence of PW.1, more particularly, in the absence of any other witnesses being examined to prove the contents of Exs.A-1, A-2 and A-4 and thereby dismissed the claim petition.

11. Heard Sri Palle Sriharinath, learned counsel for the appellant - claimant and Sri Srinivas Rao Vutla, learned standing counsel for respondent No.4 - Insurer. The appeal against respondent No.1, insurer of opposite lorry was dismissed for default, by order, dated 03.02.2011, whereas though, notices were served on respondent Nos.2 and 3, none appear.

12. The learned counsel for the appellant relied on the ruling in **New India Assurance Company Limited v. Pazhaniammal and others**¹, for the proposition that production of charge sheet is *prima facie* sufficient evidence of negligence for the purpose of claim under Section 166 of the Act, and if Tribunal finds charge sheet suspicious or collusive or any of the parties do not accept it, procedure of production of evidence may be adopted, and also for the proposition that in the absence of specific pleadings and evidence, if totality of circumstances convince the Tribunal that there is negligence, the

¹. 2012 ACJ 1370

Tribunal would be justified in awarding compensation under Section 166 of the Act.

13. The only point that arises for consideration is, whether the Tribunal was right in dismissing the claim petition?

14. One-thing is certain from the ruling relied on by the learned counsel for the appellant. That being, in case the Tribunal finds charge sheet suspicious or collusive or any of the parties do not accept it, procedure of production of evidence will have to be adopted. When the fact-situation occurring in the instant case is examined, on the anvil of the aforesaid legal principle, certainly, it has to be held that the aforesaid ruling would not render any assistance to the claimant. The claimant despite averring specifically in his pleading that he was actually driving the lorry bearing registration No.ADT 8000 at the relevant time and his father, cleaner and owner of the Jawar Choppa were all sitting in the lorry, but when comes to the evidence part as PW.1, he asserts that his father was driving the lorry but not himself. It is not known why such a twist is made by the claimant and perhaps, with an oblique motive of getting over the fundamental violation of not holding valid subsisting driving license to drive a goods vehicle, he did resort to such variance. However, even giving some allowance to it, still, the claimant failed to produce the driving license of his father. It is no doubt true, the charge sheet was laid against the driver of the opposite vehicle i.e., lorry No.KA 38

d1109, but when the claimant himself is unable to prove whether he was actually driving the lorry or whether his father was driving the lorry as he varied the stand between plea and proof, more particularly, he did not even file the driving license of either his father or his driving license, despite asserting that they do possess valid driving license to drive the lorry, the opinion expressed by the Tribunal cannot be faulted. In such an event, when the legal principle relied on by the learned counsel for the claimant is applied, the claimant ought to have examined the Investigating Officer to prove the contents of FIR and charge sheet and that his version is correct. Therefore, the Tribunal on the ground not only there has been variance between plea and proof, but also failure on the part of the claimant to produce the driving license and also that the claimant failed to prove rash and negligent driving on the part of the driver of the opposite lorry by non-examination of other witnesses cannot be withheld as it cannot be viewed that the finding recorded by the Tribunal is perverse warranting interference. There is no merit in the present appeal.

15. The appeal is, accordingly, dismissed. 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