

SMT JUSTICE T. RAJANI

MACMA.No.350 of 2008

JUDGMENT:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the III Additional Chief Judge, City Civil Court, Hyderabad in OP.No.1626 of 2005 dated 02.06.2007 on the grounds that the Court below erred in dismissing the petition on the ground that the Doctor was not examined to confirm Exs.A1 and A3 and the Court below ought to have considered Exs.A1 to A5 and allowed the petition.

2. Heard counsel for the appellant. Respondent counsel remained absent.

3. The counsel for the appellant would contend that the Court below dismissed the petition on two grounds one is that the injuries are not proved by examining the Doctors concerned and the other is that the claimant failed to take any steps to get the petition restored against the owner against whom the petition was dismissed for default on 15.12.2005. The counsel for the appellant placed reliance on a judgment of this Court in MACMA.No.3167 of 2005 wherein the matter was remitted to the Tribunal for fresh disposal.

4. But, however, in this case, it appears that the default of the claimant in taking the steps to get the petition restored against the owner seems to be one of the reasons for the dismissal. There was yet another reason for the Court below to dismiss the petition i.e. that the claimant failed to prove the injuries. It relied on a decision of this

Court in *UNITED INDIA INSURANCE COMPANY v. MOHD. KHAJA RASOOL SAYED* [2003 (5) ALD 162], wherein this Court observed that when the medical certificate is issued by private hospital, it has to be proved by examining the concerned doctor.

5. As regards dismissing the petition against the owner for default of the claimant in taking steps to restore the petition against the owner, the counsel for the appellant relied on a decision of a Division Bench of this Court in *M. CHAKRA RAO v. Y. BABU RAO*¹, wherein this Court held that if the claims tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the insurance. Hence, dismissing the petition on that ground cannot be sustained.

6. As regards the Court below not relying on the medical certificate for the reason that the doctor was not examined and also due to the fact that no record pertaining to the treatment of the claimant in KIMS hospital was filed, it can be seen from the evidence of P.W.1, who is the claimant, that the treatment he took in KIMS hospital is only in the form of first aid treatment. Record pertaining to the KIMS hospital is

¹ 2001(1) ALT 495 (DB)

filed but disbelieving the evidence of P.W.1, the same is not considered.

7. A decision of the High Court of Kerala in *UNITED INDIA INSURANCE CO. LTD. v. SETHU MADHAVAN*² dealt with a similar aspect. It was considered whether the provisions of the Evidence Act, 1872 can be applied to a proceeding before the quasi-judicial Tribunal like the Commissioner for Workmen's Compensation and it concluded by saying that they are not applicable. Section 1 of the Evidence Act was held as applying to judicial proceedings in or before any Court. It was observed that if the Evidence Act is made applicable the same would make unavailable the gathering of evidence in an expert manner, which is the essence of the fact-finding bodies. It was held that the administrative and quasi-judicial proceedings are not fettered by technical rules of evidence and the tribunals are entitled to act on materials which may not be accepted as evidence in a Court of law. But they should adhere to the rules of natural justice. It relied on a decision of the Supreme Court in *UNION OF INDIA v. T.R. VARMA* [AIR 1957 sc 882] wherein it was held that the Evidence Act has no application to enquiries conducted by Tribunal even though they may be judicial in character, it was stated that they should observe rules of natural justice.

8. Hence, the above observations can be borrowed in this case to direct the Court below to consider the evidence of P.W.1 and the material placed by him in a pragmatic manner keeping in mind that the claim is one under a beneficial legislation and to rely on the

² 1 (1994) ACC 577

medical record produced by the claimant. The Court below shall also discuss the probabilities of the claimant incurring medical expenditure by considering the medical certificate and arrive at a just compensation.

In the terms indicated above, the civil miscellaneous appeal is disposed of remitting the matter to the Court below for disposal afresh. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

October 12, 2017
LMV

T. RAJANI, J

