

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2830 of 2004

JUDGMENT:

Aggrieved by the order and decree dated 27.02.2004 passed in M.V.O.P.No.189 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III- Additional District Judge at Kakinada (for short, 'the Tribunal'), whereby and whereunder, the claim of the petitioner for grant of compensation of Rs.1,00,000/- for the injuries sustained by him in a road accident was declined, the present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988.

The appellant herein is the petitioner, whereas respondent Nos.1 to 3 herein, who are the driver, owner and insurer of the Tractor and Trailor bearing Nos. AP 5U 1669 and AP 5U 1677, respectively, are respondent Nos.1 to 3, respectively, in the O.P.

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

The facts, in brief, are that on 05.05.1999 at about 9.00 a.m., while the petitioner along with other coolies was travelling in a Tractor and trailor bearing Nos. AP 5U 1669 and AP 5U 1677 to unload the paddy bags at Biccavole and when reached near Government Puntha, the driver of the tractor drove it in a rash and negligent manner, due to which, the petitioner fell down and the tractor ran over him resulting fracture to one of his legs and other injuries. On his complaint, a crime was registered under Section 337 of Indian Penal Code initially. The petitioner claims that he received injuries all over his person and was shifted to a Hospital,

and due to the injuries, he became disabled and, therefore, sought compensation of Rs.1,00,000/- against respondent Nos.1 to 3.

Respondent No.2, owner of the vehicle, filed counter and the same was adopted by respondent No.1 by filing a memo. They denied the manner in which the accident as projected by the petitioner and sought to dismiss the claim petition against them.

Respondent No.3 – insurer resisted the claim mainly contending that the policy was not in force at the time when the accident did take place, as the policy came into force from 06.05.1999 till 05.05.1999, whereas the accident occurred on 05.05.1999 at about 9.30 a.m., therefore, sought to dismiss the claim petition against it.

The Tribunal, having framed three issues, examined the petitioner as PW.1, besides examining two Medical Officers, who treated him, as PWs.2 and 3 and marked Exs.A1 to A3 and Exs.X1 and X2. On behalf of the respondents, no witnesses were examined, but the copy of cover note of policy was marked as Ex.B1.

The Tribunal, on appraisal of evidence on record, both, oral and documentary let in by the parties, dismissed the claim petition by the order under challenge.

Heard Sri N. Siva Reddy, learned counsel for the appellant – petitioner, and Sri K. Dhananjaya Reddy, learned Standing Counsel for respondent No.3 – insurer. Against respondent Nos.1 and 2, the present appeal stood dismissed for default on 08.02.2016.

Learned counsel for the appellant – petitioner, though, made an attempt to impress upon the Court that rash and negligent driving on the part of the driver alone resulted in the petitioner slipping down and coming under the wheels of the tractor, due to which the petitioner sustained fracture to his lower limb, the same was sidelined by the Tribunal for the reason that the petitioner himself gave the complaint, in which, except mentioning that he slipped down from the rice bags and came under the wheels of the tractor and sustained injuries, there is no whisper as to rash and negligent driving on the part of the driver, and the said attempt was without there being any supporting evidence on record. That has been the vital aspect which was dealt with by the Tribunal in arriving at a conclusion that the rash and negligent driving of the driver resulted in the accident is *sine qua non* to award compensation.

There is yet another issue that being, the policy was not in force at the time when the accident took place. Ex.B1 is the copy of the cover note of the policy and it clearly indicates the commencement of policy from 11.35 a.m. on 06.05.1999 and its expiry on 05.05.2000, but the incident in this case occurred on 05.05.1999 at about 9.30 a.m. Thus, it is clear that the accident occurred prior to taking place of the policy itself. Viewed from any angle, there is absolutely no merit in the present appeal and the findings recorded by the Tribunal cannot be upset, as they are based on appreciation of evidence by well judged process of reasoning.

Hence, the present Civil Miscellaneous Appeal is dismissed. No order as to costs.

As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

JUSTICE A.SHANKAR NARAYANA

08.09.2017

v v

