

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2688 OF 2009

JUDGMENT:

Respondent No.2 - M/s. National Insurance Company Limited in O.P. No.868 of 2004, on the file of the Chairman, Motor Accident Claims Tribunal - cum - I Additional District Judge, Nizamabad (for short 'the Tribunal'), preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988, questioning the order and decree, dated 04-03-2009, awarding a compensation of Rs.1,40,000/- with interest at 7.5% per annum on the main grounds; firstly, that the injury certificate, Ex.A-3, shows the date of accident as 21.12.2003 and admitted on the very same date, whereas, Ex.A-1 - copy of first information report and Ex.A-2 - copy of charge sheet, respectively, would show the date of accident as 22.12.2003 at 3.20 p.m., giving rise to any amount of doubt as to respondent No.1 - petitioner having sustained the injuries in the accident projected by him; second, in Ex.A-7 - case sheet, the name of father of the petitioner is shown as Bhumaiah, though, the petitioner described his father's name as N. Chinnanna alias Sayanna; and on these two grounds, sought to set aside the order and decree.

2. Heard Sri Ravi Shankar Jandhyala, learned standing counsel for the appellant – insurer. Though service was completed on respondent Nos.1 and 2, none of them entered appearance.

3. The main submission of the learned standing counsel for the appellant - insurer has been, that the Tribunal went wrong in awarding compensation, despite the fact that the very documents filed by respondent No.1 - petitioner would clearly indicate that though, he alleged to have sustained injuries on 22.12.2003, in a road accident while travelling in an auto-rickshaw, but in Ex.A-3, which is wound certificate said to have issued by the Hospital, bears the date of admission "21.12.2003", and there is no explanation offered by either PW.1 or PW.2, the doctor, and on the other hand, PW.2, who is an Orthopaedic Surgeon in Sri Aditya Orthopaedic Nursing Home, admits in his cross-examination that he has not reported to the police about Medico Legal Case being admitted in his hospital and he has not given any separate medico legal case number.

i) The second submission is, the case-sheet - Ex.A-7 also would indicate the father's name of the petitioner as Bhumaiah, but respondent No.1 - petitioner described his father's name as 'N. Chinnanna alias Sayanna'. It is his submission that even according to the record filed by the petitioner, the accident said to have occurred on 22.12.2003 at 3.20 p.m. as per Ex.A-1 - first information report lodged by one R. Amber Singh, but it was lodged and registered only on 23.12.2003 at 12.30 p.m. It is, therefore, his submission that the petitioner's sustaining injuries in a road accident and the involvement of the auto-rickshaw, in which he said to have

been travelling, is doubtful, and the Tribunal ignoring these material discrepancies or inconsistencies, somehow, awarded compensation and, therefore, sought to set aside the order and decree.

4. The fact-situation would show that the petitioner on 22.12.2003, along with others was travelling in an auto-rickshaw bearing registration No.AP 25U 2540 from Chandoor village towards Laxmapoor village, and when it reached the limits of Karegaon thanda of Varni Mandal at about 3.20 p.m., since the auto-rickshaw was driven in a rash and negligent manner at high speed, and driver lost control over the auto-rickshaw, it went off the road and turned upside down, resulting in injuries to the petitioner and two others. According to the petitioner, he sustained crush injury to pelvis, left foot and right hip and fracture to skull and also fracture of ribs.

i) He states that he was referred to Government Headquarters Hospital, Nizamabad for special treatment, but was admitted in private hospital and treated as inpatient from 21.12.2003 to 15.1.2004 and underwent major surgeries to left leg on 21.12.2003, and on 6.1.2004, his left leg was amputated below the knee and discharged from the hospital. On the date of filing the claim petition, he was still undergoing treatment and incurred Rs.3,00,000/-. He also states that he was earning Rs.12,000/- per month on his milk business and agriculture and, therefore, sought to grant a compensation of Rs.5,00,000/-.

5. Respondent No.1, owner of the auto-rickshaw, and respondent No.2, its insurer, filed separate counters.

i) Respondent No.1 has taken the stand that the auto-rickshaw was insured with respondent No.2 and, therefore, respondent No.2 is liable to pay the compensation, and consequently, to dismiss the claim petition against him.

ii) Respondent No.2 - Insurer resisted the claim taking various pleas, which of course, are unnecessary to mention herein, since there is no specific plea about inconsistencies now pointed out.

6. The Tribunal having framed three issues, examined PWs.1 and 2 and marked Exs.A-1 to A-9 on behalf of the petitioner. On behalf of the Insurer, no witnesses were examined, but copy of the insurance policy was marked as Ex.B-1 on consent.

7. For two reasons, the matter requires to be remanded. First, the discrepancy in the date occurring in Ex.A-3 and case set out by the petitioner showing the date as 22.12.2003, on which the accident said to have occurred, which stood unexplained in the evidence of PW.1, nor in the evidence of PW.2. Second, the case-sheet - Ex.A-7, as rightly contended by the learned standing counsel for the appellant, shows the name of the father of the petitioner as 'Bhumaiah'. In fact, the petitioner described his father's name as 'N. Chinnanna alias Sayanna'. To explain these inconsistencies, nothing is forthcoming in

the evidence, nor the petitioner entered appearance. In such an event, certainly, it would be difficult to record definite findings in this appeal on the grounds agitated by the appellant -insurer.

8. Hence, the matter is remitted to the Tribunal with a direction to give further opportunity to both sides to lead evidence in addition to the evidence already let in and to dispose of the original petition within six (6) months from the date of receipt of a copy of this order uninfluenced by the observations, if any, made by this Court herein.

i) It is seen from the proceedings that the appellant - insurer was directed to deposit half of the amount awarded by the Tribunal with proportionate costs and interest within a period of six weeks from the date of that order made on 17.7.2009 in MACMAMP No.3730 of 2009, and respondent No.1 - petitioner was permitted to withdraw a sum of Rs.50,000/- and the entire costs and interest. In case, the petitioner has already withdrawn the amount, the Tribunal may pass suitable orders while disposing the original petition.

9. Accordingly, the Civil Miscellaneous Appeal is allowed setting aside the order and decree under challenge and remitting the matter to the Tribunal, as indicated in the above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

January 20, 2017.
Mgr

