

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.3749 OF 2004

JUDGMENT:

The present appeal is preferred by Respondent No.3 - M/s. United India Insurance Company Limited in O.P. No.752 of 2001 under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act') by raising the grounds in paragraph No.2 thus:

“

2. The Court below in utter violation of Rules of Evidence and the Law awarded compensation of Rs.84,000/- for the alleged injuries inasmuch as

- i) The Claimant never appeared before Court to establish that she received the alleged injuries;
- ii) She did not examine herself in Chief;
- iii) She did not facilitate cross examination on behalf of the Appellant Company or to facilitate Medical Examination by a Doctor on behalf of the Appellant Company. ”

2. The order under challenge was rendered on 12.07.2004 in O.P. No.752 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - V Additional Chief Judge, City Civil Court, Hyderabad (for short 'Tribunal'), whereby and where-under, a sum of Rs.84,000/- was awarded towards compensation for the injuries sustained by the petitioner as against the claim of Rs.3,02,000/- laid under Section 166 of the Act.

3. Respondent Nos.2, 3 and the appellant herein, who are driver, owner and insurer of Ambassador Car bearing registration

No.AP 09 AC 6714, respectively, are respondent Nos.1 to 3 in the aforesaid O.P., while respondent No.1 is petitioner.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid OP before the Tribunal.

5. Heard Sri E. Venugopal Reddy, learned standing counsel for the appellant - Insurer. There is no representation for respondent No.1 - petitioner and respondent No.3 - owner of the vehicle.

6. The learned counsel for the appellant would submit that the petitioner, who sustained injuries, is not examined herself as a witness and, therefore, the order passed by the Tribunal is liable to be set aside. That has been the main ground agitated in the present appeal.

7. It is no doubt true, the petitioner herself did not examine as a witness before the Tribunal, but PW.1 is no other than her father. Of course, she was not a minor when she presented the petition, as her age is shown as 25 years. Records have been destroyed as per the Destruction Rules. That has been the reply from the Tribunal while records were called for.

8. Be that as it may, the only question that arises for consideration is:

Whether in the absence of evidence of injured, can claim be allowed?

9. In the cause-title, she is shown as daughter of PW.1. No authority is placed to support that in such an event, no compensation

at all can be granted. When she is described as the daughter of PW.1, she would have taken care to see that she was treated when she was hospitalized. The Tribunal has not accepted the medical expenses on the mere ground that the doctor was not examined. Certainly, on that basis, the present appeal cannot be allowed by setting aside the order and decree under challenge. Unless the mandatory provision requiring the petitioner/injured to examine himself or herself to prove the claim, it is difficult to accede to the request of the learned counsel for the appellant. There is no merit in the present appeal.

10. Concerning the rate of interest awarded by the Tribunal at 9% per annum, the same is reduced to 7.5% per annum on the amount granted by the Tribunal in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

11. The present appeal is, therefore, allowed in part only to the extent of reducing the rate of interest, as indicated in the above, while confirming the order and decree passed by the Tribunal in all respects. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal shall stand closed.

A. SHANKAR NARAYANA, J

September 12, 2017
Mgr

¹. 2013 ACJ 1403