

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Miscellaneous Appeal No.3082 OF 2004

JUDGMENT:

Aggrieved over the dismissal of the order and decree, the petitioner/claimant, preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'). The petitioner/claimant laid the claim under Section 166 of the Act for awarding compensation of Rs.90,000/- for the injuries she sustained in a road accident with interest at 18% p.a. from the date of petition till realization.

2. The learned Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Adilabad, by his order dated 19.7.2004 in O.P. No.525 of 1999 rejected the request.

3. The fact-situation occurring in the present case is that on 27.1.1998 at about 2.00 p.m. while the petitioner/claimant was travelling in a Jeep bearing No.API-6500 from Bhainsa to go to Adilabad and when it reached Arli cross-roads a lorry bearing No.APJ-3422, owned by the 2nd respondent and got insured with the 3rd respondent, which was also proceeding in the same direction ahead of the said jeep, suddenly turned towards Arli village without showing any signal or precaution due to which the angular portion of the said lorry came into contact with the left hand of the claimant and her little finger was cut off and other two fingers were fractured. Thus, on account of sudden turning taken by the driver of the lorry negligently

and in a rash and negligent manner, occasioned the injuries to the person of the petitioner/claimant. Therefore, she claimed the aforesaid compensation.

4. The first respondent remained *ex parte* before the Tribunal. The 2nd respondent filed counter resisting the request attributing rash and negligent driving to the driver of the jeep, and, therefore, sought to dismiss the claim petition. The 3rd respondent – Insurer filed counter resisting the request raising various pleas.

5. On the basis of the pleadings, the following three issues were framed.

- (1) Whether the petitioner sustained injuries in the accident occurred on 27.1.1998 due to the rash and negligent driving of the Lorry bearing No.APJ-3422 or Jeep No.API-6500, by its driver?
- (2) Whether the petitioner is entitled to any compensation? If so, to what amount and against whom?
- (3) To what relief?

6. During enquiry, the petitioner examined himself as P.W.1 and marked Exs.A1 to A5. On behalf of the 3rd respondent, the 1st respondent was examined as R.W.1 and Ex.B1 is marked with the consent, and no oral or documentary evidence is adduced on behalf of the respondents 1 and 2.

7. The Tribunal having taken all the three issues together for discussion and having found the evidence of R.W.1 and basing on

the evidence of R.W.1 arrived at the finding that there was no rash and negligent driving on the part of the driver of the lorry and thereby dismissed the application.

8. The reason for recording the said finding was that the driver of the lorry as R.W.1 asserted that near Kallur Chowrastha when he found four tractor trailers loaded with earth stopped ahead of his lorry, the drivers and cleaners of those tractors were quarrelling with each other blocking the road and since the jeep was driven at a high speed came and dashed against the stationed lorry on its back side, the Tribunal opined that there was rash and negligent driving on the part of the jeep driver but on the part of the driver of lorry.

9. Heard Sri S. Surender Reddy, learned counsel for the appellant and Sri P. Harinath Gupta, learned Standing Counsel for the 3rd respondent. Claim petition was dismissed against respondent No.1, driver of the lorry. Whereas the 2nd respondent has not entered appearance despite service of notice.

10. Two questions arise for consideration. First is, whether the finding recorded by the Tribunal is based on proper appreciation of evidence warranting interference or whether it is patently wrong?

11. Second is, whether the appellant is entitled to any compensation in case the first point is held in affirmative, and, if so, to what amount?

12. A perusal of the documentary evidence marked as Exs.A1 to A5 which are significantly important in arriving at the finding recorded by the learned Chairman is palpably wrong. Certified copy of charge-sheet, marked as Ex.A3, would clearly indicate that the lorry driver was arraigned as accused and even in Ex.A1-Certified copy of First Information Report in Crime No.4 of 1998 of Kuntala P.S. When the investigating officer probes into the incident and having recorded the statements of witnesses arrived at an opinion that there has been a case made out against the lorry driver whose rash and negligent driving occasioned the accident and arraigned the lorry driver as accused, but not the driver of the tractor, certainly, it favours the appellant, and, therefore, it cannot be said that the finding recorded by the Tribunal is on proper lines and in accordance with evidentiary rule. The fact that the lorry driver suddenly stopped the lorry at the relevant time and place and without giving any signal is sufficient to hold that the lorry driver was negligent, and the driver of the jeep, therefore, would not have scope to avert taking place of the accident i.e., hitting the stationed lorry from the back side. Hence, reversing the said finding, it is held that on account of rash and negligent driving of the lorry the accident had occurred.

13. Now, turning to what would be the just compensation, it is not in dispute that the petitioner sustained injuries i.e., fractures to three fingers as mentioned in the above. In fact, one finger was cut. In such an event, keeping in view the details recorded in Ex.A2 –

Certified Copy of Medical Certificate and the treatment undergone by the petitioner she is entitled to a sum of Rs.25,000/- under all counts both pecuniary and non-pecuniary heads.

14. In the result, the Appeal is partly allowed granting a compensation of Rs.25,000/- under all counts both pecuniary and non-pecuniary heads fixing the liability on the respondents 2 and 3 herein, while dismissing the claim petition against the respondent No.1, Driver of Lorry. The rate of interest at 7.5% p.a. is awarded thereon from the date of petition till realization keeping in view, the ruling in **Rajesh v. Rajbir Singh**¹. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA,J

03rd October, 2017
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¹ (2013) 9 Supreme Court Cases 54