

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.1627 OF 2003

JUDGMENT:

Though, the present Civil Miscellaneous Appeal was notified earlier and re-notified, and specially posted to take up from 12:30 p.m. onwards in today's Cause List, there is no representation for the appellant, therefore, intended to decide the matter on merits.

2. The present CMA is preferred by appellant - M/s. National Insurance Company Limited, aggrieved over the order and decree, dated 20.01.2003 in M.V.O.P. No.729 of 2001, on the file of the Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, Vijayawada (for short 'Tribunal'), whereby and whereunder, an amount of Rs.1,51,856/- was awarded as compensation for the injuries sustained by respondent No.1 herein with interest at 9% per annum thereon as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act').

3. Respondent No.2 and the appellant herein, who are owner and insurer of auto-rickshaw bearing registration No.AP 16X 2702, are respondent Nos.1 and 2, respectively, in the aforesaid M.V.O.P., while respondent No.1 is the petitioner.

4. For the sake of convenience, the parties hereinafter referred to as they were originally arrayed in the aforesaid MVOP.

5. The relevant facts to adjudicate upon the present request are, that on 23.12.2000, the petitioner along with one Sri R. Sreenu was proceeding on TVS XL Super Moped bearing registration No.AP 16P 3986 towards Piple Road, and when they reached near Singh Nagar at about 10.30 p.m., an auto-rickshaw bearing registration No.AP 16X 2702 driven by its driver in a rash and negligent manner came in opposite direction and hit the moped, resulting the petitioner's falling down and sustaining injuries to various parts of his person. The pillion rider shifted him to Charita Sri Hospital, where the petitioner claims having undergone treatment by spending about Rs.82,208/- towards medical expenses. The concerned police also registered a case against the driver of the auto-rickshaw and, therefore, he laid the aforesaid claim.

6. Before the Tribunal, respondent No.1, owner of the vehicle, remained *ex parte*. Respondent No.2 - Insurer denied various allegations levelled in the claim petition and sought the petitioner to prove that he possessed driving license to drive the scooter, and however, pleaded that it is not liable to pay compensation and sought to dismiss the claim.

7. The Tribunal framed the following issues:

1. Whether the petitioner sustained injuries in a Motor accident occurred on 23.12.2000 due to rash and negligent driving of driver of Auto AP 16 X 2702?

2. Whether the petitioner is entitled for compensation as prayed for? If so, from whom?

3. To what relief?

8. In order to determine the compensation as well as liability to pay the same, the Tribunal, on behalf of the petitioner, PWs.1 to 3 were examined, amongst whom, PW.1 is the petitioner himself and PW.3 is the doctor, who treated the petitioner, and marked Exs.A-1 to A-6. On behalf of respondent No.2, its local branch officer was examined as RW.1, but no documents were filed.

9. The Tribunal recorded a finding on issue No.1 that the accident occurred due to rash and negligent driving of the driver of the auto-rickshaw basing on the evidence of PWs.1 and 2 and the contents of Ex.A-6.

10. In regard to liability as well as the amount, to which the petitioner was entitled as against the claim of Rs.2,00,000/-, the Tribunal considering Exs.A-1 and A-2, arrived at that the amount of Rs.82,000/- shown therein supported by X-rays six in number and the nature of injuries sustained by PW.1, granted Rs.25,000/- to each fracture; Rs.15,000/- towards head injury; Rs.82,208/- towards medical expenses as per Ex.A-2 and Rs.4,648/- towards medical bills as per Ex.A-5 and, thus, granted a total sum of Rs.1,51,856/- with interest at 9% per annum thereon.

11. In the grounds of appeal, the Insurer once again pleaded attributing rash and negligent driving to the petitioner himself. It is also stated that the amount of Rs.82,208/- towards medical expenses was wrongly granted without there-being proof therefor, and just basing on Ex.A-2, credit bill and also stated that the evidence of RW.1 was not properly appreciated.

12. Heard Sri Ravi Kumar Tolety, learned counsel for respondent No.1 - petitioner.

13. As could be seen from the grounds of appeal, the insurer is not pleading any violation of terms and conditions of the policy rather questioning the quantum of compensation and the mode of granting the amounts.

14. The discussion on issue No.1 made by the Tribunal, *ex facie*, would show that there has been process of reasoning based on proper appreciation of evidence on record. In fact, the evidence of PW.3 - Medical Officer and the discharge summary under Ex.A-1, would show that the petitioner sustained injury on the back side of the head and there was clotting of blood, besides fracture to his right leg. The medical evidence on record would show that he has undergone surgical interventions twice to his right leg and, therefore, the amounts of Rs.82,208/- and Rs.4,648/- granted by the Tribunal towards

medical expenses since based on Exs.A-2 and A-5 cannot be faulted.

There is no merit in that ground agitated by the appellant.

15. Concerning the amount of Rs.25,000/- granted towards each fracture, the same cannot also be viewed as on higher side. The amount of Rs.15,000/- granted towards head injury can be justified for the reason that the evidence of PW.3 would show that PW.1 was being treated even by the date of filing the claim petition and there was memory weakness suffered by PW.1 on account of head injury. In fact, the Tribunal has not granted certain amounts under different heads, such as extra nourishment, attendant charges, transport charges and pain and suffering though, for the injuries the Tribunal has granted amounts. Therefore, it cannot be said that the amounts awarded by the Tribunal are on higher side and, on the other hand, the amounts awarded by it on different heads are to be construed as just and adequate. There is no merit in the appeal.

16. The present appeal is, accordingly, dismissed, confirming the order and decree passed by the Tribunal. 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

August 10, 2017.

Mgr