

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.1240 of 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity) is filed by the appellant-the Oriental Insurance Company Limited, challenging the order, dated 27.12.2004, passed in O.P.No.696 of 1998, by the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge (FTC) Nizamabad ('the Tribunal', for brevity).

2. Heard the learned Standing Counsel for the appellant-Insurance Company and perused the record. In spite of service of notice on the 1st respondent-claimant, she did not choose to contest this appeal. This appeal is of the year 2005. Hence, this appeal can be disposed on merits, basing on the material available on record.

3. The learned Standing Counsel for the appellant-Insurance Company would contend P.W.1-injured claimant supported the case of the appellant-Insurance Company in the chief examination. Further, she was not subjected to cross-examination. Therefore, her evidence was eschewed by the Tribunal, vide docket order, dated 11.02.2004. Without there being oral evidence, the Tribunal granted a compensation of Rs.20,000/- with interest @ 9% per annum from the date of petition till the date of deposit in favour of the 1st respondent-claimant, which is untenable and ultimately prayed to allow the appeal by setting aside the Order under challenge.

4. A perusal of the record placed before this Court would go to show that the 1st respondent/claimant deposed as P.W.1 before the Tribunal on 28.08.2003. Thereafter, she was recalled and again examined in chief on 14.11.2003. Ex.A.1-Xerox copy of FIR, Ex.A.2-Certified copy of Wound Certificate, Ex.A.3-X-ray film and Ex.A.4-Xerox copy of insurance cover note were marked through her evidence on 14.11.2003. Thereafter, the case was adjourned for five times for cross-examination of P.W.1, but she did not appear before the Tribunal for her cross-examination. Finally on 11.02.2004, the evidence of P.W.1 was eschewed by the Tribunal. Thereafter, the proceedings underwent several adjournments.

5. The Tribunal, without dealing with the aspect of eschewing of evidence of P.W.1(claimant) by its order, dated 11.02.2004, took the evidence of P.W.1 into consideration while answering issue No.1, i.e., with regard to rashness or negligence on the part of the driver of the jeep bearing registration No.APG-6018 and held the said issue in favour of the 1st respondent-claimant. While answering issue No.2, i.e., with regard to the entitlement of the claimant for compensation, the Tribunal did not state a single word with regard to the chief-examination of P.W.1 and eschewing of her evidence by order, dated 11.02.2004 and proceeded with adjudication of the *lis*, as if the evidence of P.W.1 was on record. As per the record, the evidence of the claimant (P.W.1) was eschewed on 11.02.2004. Through her evidence only Exs.A.1 to A.4 were marked. There is no other oral evidence. When the evidence of P.W.1 (claimant) was

eschewed by the Tribunal by its docket order, dated 11.02.2004, no reliance can be placed on Exs.A.1 to A.4, either to hold that there was rashness or negligence on the part of the driver of the jeep bearing registration No.APG-6018 or with regard to assessment and grant of compensation in favour of the 1st respondent-claimant (P.W.1). The Tribunal erred in considering the evidence of P.W.1 as well as Exs.A.1 to A.4 and awarding compensation of Rs.20,000/- with interest @ 9% per annum from the date of petition till the date of deposit in favour of the 1st respondent-claimant. The impugned order suffers from patent irregularity. Therefore, the same is liable to be set aside.

6. In the result, the appeal is allowed by setting aside the order, dated 27.12.2004, passed in O.P.No.696 of 1998, by the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge (FTC) Nizamabad. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

06th August, 2018
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Dr. SHAMEEM AKTHER, J