

**THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**C.M.A.No.4877 OF 2004**

**JUDGMENT:**

This appeal is preferred by the appellant/claimant questioning the order of the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Adilabad (for short, the Tribunal) in O.P.No.627 of 1999 dated 09.11.2004.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The brief facts of the case are that on 22.09.1998 the petitioner was going in auto bearing No.AP-1-T-3022 from Bhainsa towards Ramtake and when the auto reached near Degaon Village, on observing tractor coming at high speed in rash and negligent manner in opposite direction, the auto was taken to extreme left side of road margin and that in spite of it, driver of tractor bearing No.AP-1-T-1639 dashed the auto, due to which the auto turned turtle and the petitioner sustained grievous and multiple injuries and became disabled. Hence, the present claim petition is filed by the petitioner claiming compensation originally at Rs.3,50,000/- and subsequently amended as Rs.13,50,000/-. The 1<sup>st</sup> respondent is the owner and the 2<sup>nd</sup> respondent is the insurer of the tractor bearing No.AP-1-T-1639. The 3<sup>rd</sup> respondent is the owner and the 4<sup>th</sup> respondent is the insurer of the auto bearing No.AP-1-T-3022.

4. In the claim petition, the 1<sup>st</sup> respondent did not file any counter. The 2<sup>nd</sup> respondent also did not file any counter originally, but filed additional counter after amendment of the petition contending that the amended claim is excessive and that it is not liable to pay any compensation and therefore prayed to dismiss the claim petition.

5. The 3<sup>rd</sup> respondent filed counter contending that the auto is insured with the 4<sup>th</sup> respondent and that the 4<sup>th</sup> respondent alone is liable to pay compensation and that the driver was driving the auto cautiously and slowly and that the accident took place due to rash and negligent driving of the 1<sup>st</sup> respondent's vehicle and that the claim is excessive and that he is not liable to pay any compensation and therefore prayed to dismiss the claim petition.

6. The 4<sup>th</sup> respondent filed counter denying the material allegations in the claim petition and contending that there was no negligence on the part of the auto resulting in the accident and that the negligence is on the part of the tractor which dashed against the auto and that it is not liable to pay any compensation and that there is neither statutory nor contractual liability to pay compensation and that the respondents 1 and 2 alone are liable to pay compensation and that the claim is excessive and therefore prayed to dismiss the claim petition.

7. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident

occurred due to the rash and negligent driving of the driver of the tractor bearing No.AP-1-T-1639 resulting in injuries to the petitioner and that the driver of the auto bearing No.AP-1-T-3022 was not responsible for the accident and awarded compensation amount of Rs.1,35,378.70/- with interest @ 9% per annum from the date of petition till realization payable by respondents 1 & 2 and the claim petition is dismissed against respondents 3 & 4. Dissatisfied with the quantum of compensation, the appellant/petitioner/claimant filed the present appeal.

8. Heard.

9. Along with the petitioner, the other injured persons, who were traveling in the same auto bearing No.AP-1-T-3022, have filed separate O.Ps. i.e., O.P.Nos.717 of 1999 and 718 of 1999, claiming compensation. The Tribunal has clubbed together the present O.P.No.627 of 1999 and the said two O.P.Nos.717 of 1999 and 718 of 1999 and recorded common evidence. The Tribunal has dealt with the matters and has awarded compensation individually.

10. Sri C.V.Rajeev Reddy, learned standing counsel for the 2<sup>nd</sup> respondent/insurance company submitted that the petitioner/claimant in O.P.No.717 of 1999 has filed appeal in CMA.No.4830 of 2004 and the petitioner/claimant in O.P.No.718 of 1999 has filed appeal in CMA.No.4825 of 2004 and the said appeals have been dismissed by this Court *vide*

orders, dated 18.06.2009, by referring to a decision of the Supreme Court in **Rajesh Kumar v. Yudhvir Singh**<sup>1</sup>, wherein the Supreme Court held that disability certificate given by a doctor who did not treat immediately after the accident or disability certificate given by doctor after lapse of time is not proper evidence and prayed to dismiss the appeal.

11. Having regard to the facts and circumstances of the case and the submissions made by the learned standing counsel for the 2<sup>nd</sup> respondent/insurance company, I do not see any reason to interfere with the award granted by the Tribunal and the appeal is liable to be dismissed.

12. Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the award and decree passed by the Tribunal in all respects, including the rate of interest. No order as to costs.

Miscellaneous petitions pending, if any, shall stand dismissed.

**T.AMARNATH GOUD, J**

Date: 23<sup>rd</sup> September, 2019

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<sup>1</sup> (2008) 7 SCC 305 = AIR 2008 SC 2396