

THE HON'BLE SRI JUSTICE S.V.BHATT

M.A.C.M.A.No.2015 OF 2005

JUDGMENT:

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Third respondent in M.V.O.P.No.7 of 2002 in the Court of the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupathi (for short 'the Tribunal'), is the appellant herein. The award dated 29.03.2005 of the Tribunal is under challenge under Section 173 (1) of the Motor Vehicles Act, 1988.

The appellant challenges the liability and alternatively the quantum of compensation awarded by the Tribunal.

The circumstances relevant for the disposal of the appeal are as follows:

On 01.08.2001, while the 1st respondent, along with her husband and other family members, was travelling in Maruthi Car bearing No.KA 01 P 8601 from Tirupathi to Punganur to their relatives house, at about 06.30 A.M., when the Maruthi Car reached Kondavada on Chandragiri-Tirupathi Road, an ambassador car bearing No.AAY 499, driven by the 2nd respondent in a rash and negligent manner, hit the Maruthi Car. The 1st respondent received multiple injuries and fractures in the said accident. The accident was registered in Cr.No.93 of 2001 of Chandrigiri Police Station.

The 1st respondent in all claimed Rs.2 lakhs towards compensation under various heads from the appellant/insurance company and respondents 2 and 3 in the appeal. It is relevant to note that the appeal is dismissed for default against respondents 2 and 3.

In the counter filed by the appellant, the age, occupation, income and nature of injuries sustained by the 1st respondent are disputed. The 1st respondent is the mother of 3rd respondent and she is not a third party and the insurance company is not liable to pay compensation. The policy was marked as Ex.B-1. It is not in dispute

that the policy is comprehensive.

The Tribunal settled the following issues for consideration:

- i. Whether the pleaded accident occurred and if so, was it due to the fault of the driver of the Ambassador car bearing No.AAY 499 or the driver of Maruthi Car bearing No.KA 01 P 8601 or both?
- ii. Whether the Maruthi Car in question belongs to 2nd respondent and stood insured with the 3rd respondent by the date of accident and if so whether policy covers the risk of the petitioner?
- iii. Whether the petitioner suffered injuries and entitled to compensation and if so to what amount and from which of the respondents?
- iv. To what relief?

The 1st respondent was examined as P.W.1 and Dr.S.Venkata Ramana was examined as P.W.2. On behalf of the appellant, Ex.B-1 has been marked with consent and no one was examined.

The Tribunal on issue Nos.1 and 2, after considering the entire sequence of events, probabilities of the case and that the

1st respondent was the inmate in Maruthi Car, held as follows:

“Now the point for consideration in this matter is whether the petitioner is third party to the contract between the owner of the vehicle and insurer. The 2nd petitioner is the owner of the Maruthi Car and the 3rd petitioner is insurer of the Maruthi Car. The driver of the Maruthi Car is the husband of the petitioner and the owner of the Maruthi Car is the son of the petitioner, therefore, the petitioner claims own damages. It is admitted in the cross-examination of RW.1 that the contract of insurance was between the 3rd respondent and the owner of the car i.e., 2nd respondent. It is also admitted that the petitioner as well as the driver are third parties to the insurance policy and therefore,

there is coverage of insurance policy. Ex.B.1 is the insurance policy filed by the 2nd respondent which shows that the insurance coverage was there for third party with unlimited liability and also it covers the damage to the property. In view of the clear admission of RW.1 in the cross-examination, it can be safely concluded that the insurance company is liable to pay compensation to the petitioner as the petitioner is third party. In this case negligence of other side need not be proved. In the circumstances of this case, I hold that the respondents 1 to 3 are jointly and severally liable to pay compensation payable to the petitioner. Accordingly issues 1 and 2 are answered in favour of petitioner and against the respondents”

On issue No.3, the Tribunal examined each one of the exhibits, considered the implication and purport of the documentary evidence and finally awarded the compensation as follows:

“In the light of the evidence available on record and keeping the age of the petitioner and her occupation, income and other aspects and keeping in view the above decisions, the petitioner is awarded the following compensation.

- a) Pain and suffering for 5 fractures - Rs.75,000-00
- b) Actual medical expenditure
permitted extra nourishment,
medicines, attendant charges etc., -Rs.1,00,00-00
- c. Loss of past and future earnings

 due to disability of 50% - Rs. 50,000-00

 -----Total Rs.2,25,000-00

Hence, the appeal.

Sri K.Lakshmi Prasad, learned counsel for the appellant, vehemently contends that there is procedural irregularity in the very disposal of M.V.O.P.No.7 of 2002, for the change of provision of law from Section 166 to 163(A) of the Motor Vehicles Act at belated stage and the averments available on record do not support the change of

provision of law. The compensation paid for injuries is on the higher side and if this Court is not in agreement with the

1st submission of the appellant, learned counsel prays for reducing the compensation suitably.

Learned counsel for respondent contends that the

1st respondent was examined as R.W.1 and on the factum of accident, being the injured and affected person, the 1st respondent has given full details and from the direct evidence available on record, the change of provision of law has not materially altered the situation, for the appellant has comprehensively covered the risk for Maruthi Car. As regards injuries, the learned counsel has specifically drawn the attention of this Court to each one of the exhibits from Exs.A-2 to A-14 and contended that, in fact, the

1st respondent is entitled to more compensation.

Now, the points for consideration are –

- i. whether the award under appeal warrants interference of this Court under Section 173(1) of the Motor Vehicles Act, 1988? and
- ii. whether in the facts and circumstances of the case, the compensation awarded by the Tribunal is just and proper?

Having regard to the admitted facts and circumstances

and to have brevity, I am not proposing to reiterate the circumstances already referred to. The contention that the change of Section from 166 to 163(A) of the Motor Vehicles Act has substantially prejudiced the appellant is required to be examined before considering the quantum of compensation awarded by the Tribunal. The 1st respondent is the mother of 3rd respondent in this appeal. They were traveling by maruthi car bearing No.KA 01 P 8601. The car in which they were traveling was insured with appellant. It is not the case of the appellant that the policy of the vehicle bearing No.KA 01 P 8601 is with conditions/restrictions.

On the other hand, at the time of hearing, it is conceded that the policy is

comprehensive. May be that the 1st respondent in her perception of the accident alleged that on account of the rash and negligent driving of 2nd respondent of ambassador car bearing No.AAY 499, the accident had happened. It does not mean that the 1st respondent has denied to herself the claim or statutory protection available against the appellant herein under the policy covered by Ex.B-1. The amendment was permitted by following the procedure stipulated by law. The appellant, if wanted to challenge to very amendment, ought to have taken such other or further objections available in law. Admittedly, no such objection is taken and the matter was argued on merits and the award under challenge was obtained. In my considered view, when once the insurance policy is held to cover the risk of injuries suffered by the

1st respondent, the objection now taken in the appeal appears to be too technical and this Court is not inclined to accept the same and accordingly, this contention is rejected.

On the question of quantum of compensation, as already noted, the compensation was granted under three heads viz., pain and suffering for five fractures, actual medical expenses and loss of past and future earnings due to disability of 50%. The amount granted under the last two heads could be appreciated from

Exs.A-2 to A-14. The 1st respondent was hospitalized on various spells from 02.08.2001 to 05.10.2001, 16.10.2001 to 29.10.2001 and 16.11.2002 to 22.11.2002. The physical disability is evidenced by Ex.A-5. The amounts spent for medical treatment, purchase of medicines etc., are all evidenced by Exs.A7 to A-14. It is required to be noted that if the documentary evidence brought on record is accepted on proper appreciation and applying the settled principles of law, certainly the 1st respondent is entitled to more compensation than what is awarded by the Tribunal. The quantum, in my considered view, is just and proper and no exception can be taken, as I am in full agreement with the well considered findings recorded by the Tribunal. The point is answered accordingly.

Appeal is, accordingly, dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

S.V.BHATT

05th November, 2015

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