

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.2769 of 2009

JUDGMENT:

1 Second respondent in O.P.No.165 of 2008 on the file of Chairman, Motor Accidents Claims Tribunal-cum-District Judge, West Godavari District at Eluru filed the present appeal under Section 173 of the Motor Vehicles Act, challenging the Judgment and award dated 02.01.2009 passed in the said O.P. wherein and whereby an amount of Rs.2,10,000/- was awarded as compensation towards damages caused to the Ambassador Car bearing No.AP 37 AQ 4208 with proportionate costs and interest at 7.5% p.a. from the date of filing of petition till the date of deposit.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

3 The facts leading to filing of the present appeal, briefly, are as follows:

4 On 22.10.2007 the petitioner and three others were proceeding to Bhimavaram from Palakol on an Ambassador Car bearing No.AP 37 AQ 4208. When the car reached Neelakantheswara Swamy vari temple in Dagguluru village, at about 2.30 p.m, the driver of an APSRTC bus bearing No.AP 10 Z 9864 drove the same in a rash and negligent manner at high speed and hit the car in which the petitioner and others were travelling causing instantaneous death of one of the inmates of the car and grievous injuries to others. The accident occurred due to the rash and negligent driving of the driver of the RTC bus against whom, the Station House Officer, Palakol (Rural) P.S. registered a case in Cr.No.109 of 2007 under Sections 304-A and 338 of IPC. Due to the accident, the Ambassador car was damaged completely. At request of the petitioner, one Yousuf Khan a licenced surveyor / loss assessor assessed the damage caused to the car as Rs.2,28,350/-. As per the quotation given by Srinivasa Complex Auto Mechanical Works, the cost of spare parts comes to Rs.2,40,250/- The petitioner spent an amount of Rs.11,650/- towards shifting of the car from one place to another. The car bearing No.AP 37 AQ 4208 was insured with the third respondent insurance company as on the date of accident under Act policy. First respondent is the driver and second respondent is the

owner of the RTC bus. Therefore, the respondent Nos.1 to 3 are liable to pay compensation of Rs.2,50,000/- to the petitioner.

5 Second respondent filed written statement denying the various allegations made in the petition, inter alia contending that when the bus reached Neelakantheswara Swamy Vari temple, Dagguluru, the driver of the Car bearing No.AP 37 AQ 4208 came in a rash and negligent manner and dashed against the RTC bus. The accident occurred due to the rash and negligent driving of the driver of the car and that there was no negligence on the part of the driver of the RTC bus. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

6 Third respondent filed written statement contending inter *alia* that it is the duty of the petitioner to prove the actual damage caused to the car. The petitioner has not submitted any claim to this respondent with regard to the alleged accident. The Station House Officer, Palakol police station registered a case in Cr.No.109 of 2007 against the driver of the RTC bus, which clearly goes to show that the accident occurred due to the rash and negligent driving of the driver of the bus and that there was no negligence on the part of the driver of the Car bearing No.AP 37 AQ 4208. Hence the petition may be dismissed.

7 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the accident occurred due to rash and negligent driving of the APSRTC bus bearing No.AP 10 Z 9864, by its driver-the 1st respondent?
- ii. Whether the petitioner is entitled to claim any compensation? If so, to what amount and against which of the respondents?
- iii. To what relief?

8 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.7 were marked. On behalf of the 2nd respondent R.W.1 was examined and Ex.B.1 was marked.

9 On appreciation of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident

occurred due to the rash and negligent driving of the driver of the APSRTC bus bearing No.AP 10 Z 9864 which resulted damage to the Car bearing No.AP 37 AQ 4208 and allowed the petition in part by awarding compensation of Rs.2,10,000/- with interest at 7.5% p.a from the date of filing of the petition till the date of deposit and directed the respondent Nos.1 and 2 to deposit the same jointly and severally. However, the petition against the third respondent was dismissed. Feeling aggrieved by the said judgment and award of the Tribunal, the second respondent preferred the present appeal.

10 Heard Sri S.V. Ramana, the learned standing counsel for the second respondent – appellant, Sri N. Sri Hari, the learned counsel for the petitioner/claimant and Sri E.Venugopal Reddy, the learned counsel for the third respondent.

11 The contention of the learned counsel for the second respondent is three fold.

- i. The Tribunal failed to consider that the accident occurred due to negligence on the part of the driver of the Car bearing No.AP 37 AQ 4208 only.
- ii. P.W.2 is not a qualified person to assess the damage caused to the car and the same was not considered by the Tribunal in right perspective, and
- iii. The amount of compensation awarded by the Tribunal is on higher side.

12 *Per contra*, the learned counsel for the petitioner submitted that the Tribunal has rightly considered the oral and documentary evidence available on record and awarded just and reasonable compensation. He further submitted that the respondent Corporation has not examined anybody to prove the negligence, if any, on the part of the driver of the Car bearing No.AP 37 AQ 4208.

13 On the other hand, the learned counsel for the third respondent submitted that the Tribunal has rightly considered various aspects and dismissed the petition against the third respondent.

14 Now the points that fall for determination in this appeal are:

1. Whether there was any negligence on the part of the driver of the car to cause the accident? If so, to what extent?
2. Whether the amount of compensation awarded by the Tribunal is just and reasonable or not?

Point No.1:

15 In order to prove the rashness and negligence on the part of the driver of the RTC bus, the petitioner examined himself as P.W.1 and got marked Exs.A.1 and A.2. To demolish the case of the petitioner, the respondent Nos.1 and 2 did not adduce any evidence. As per the testimony of P.W.1, on the date of accident he was travelling in the Ambassador Car bearing No.AP 37 AQ 4208 from Palakol to Bhimavaram. His testimony further reveals that when the car reached near Neelakantheswara Swamy vari temple, Dagguluru, the driver of the RTC bus had driven the same in a rash and negligent manner and hit the car from opposite direction. In the cross-examination of P.W.1, nothing is elicited to shake his testimony so far as the manner of accident and negligence on the part of the driver of the bus is concerned. As per the recitals of Ex.A.1, the accident occurred due to the rash and negligent driving of the driver of the RTC bus. As per the recitals of Ex.A.2 – M.V.Inspector's report, there was no mechanical defect in the car. If really the accident had occurred as pleaded by the respondent Nos.1 and 2 in their written statement, what prevented them to examine the first respondent or any other eyewitness to the accident to prove the negligence if any on the part of the driver of the car. Non-examination of the first respondent creates any amount of doubt with respect to the stand taken by the respondent Nos.1 and 2. Non registration of case against the driver of the car lends support to the version put forth by the petitioner with regard to the manner of accident and the negligence on the part of the first respondent. The oral testimony of P.W.1 is cogent and convincing, moreover supported by the recitals of Exs.A.1 and A.2. Merely because P.W.1 is the claimant, that itself is not a valid ground to discard his testimony on flimsy grounds. The Tribunal has assigned cogent and valid grounds to its findings on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the RTC bus, which resulted damage to the Car bearing No.AP 37 AQ 4208. In the light of the foregoing discussion, the submission made by the learned counsel for the second respondent has no legs to stand.

16 As per the testimony of P.W.1, due to the accident, his car was damaged completely. A perusal of Ex.A.5 photos clearly reveals the extent of damage

caused to the car. The oral testimony of P.W.2 reveals that he is a qualified surveyor. In the cross-examination P.W.2 categorically stated that he is a panel surveyor of all general insurance companies. A perusal of Ex.A.7 clearly reveals that P.W.2 is a qualified licenced surveyor. In view of the recitals of Ex.A.7, I am unable to accede to the contention of the learned counsel for the respondent Nos.1 and 2 that P.W.2 is not a qualified person to assess the damage caused to the car. As per the testimony of P.W.2, he assessed the damage at Rs.2,10,000/-. In Ex.A.3 P.W.2 mentioned the details of the damage caused to the car. As per Ex.A.4-quotation, the approximate amount required for repair of the car is Rs.2,40,250/- In the cross-examination of P.W.2, nothing is elicited to disbelieve his testimony. By examining P.W.2 and marking Ex.A.3, A.4 and A.7, the petitioner proved the damage caused to the car. As rightly pointed out by the learned counsel for the respondent Nos.1 and 2, the Ambassador Car bearing No.AP 37 AQ 4208 involved in the accident was of the year 2001 model. The Tribunal or the Court has to take into consideration the actual damage caused to the car. Basing on the oral testimony of P.W.2 and Exs.A.3 to A.5, the Tribunal awarded an amount of Rs.2,10,000/- towards repairs to the car. The material available on record clinchingly establishes that the Car bearing No.AP 37 AQ 4208 was insured with the third respondent under Ex.B.1 policy. Ex.B.1 is an Act policy. The petitioner is entitled to claim damages either from the respondent Nos.1 and 2 or from the third respondent. It appears that the petitioner has taken an Act policy. Therefore, he filed the claim petition against the respondent Nos.1 and 2.

17 Having regard to the facts and circumstances of the case, I am of the considered view that the amount of compensation awarded by the Tribunal is just and reasonable to meet the ends of justice. Therefore, I am unable to accede to the contention of the learned counsel for the respondent Nos.1 and 2 that the amount of compensation awarded by the Tribunal is on higher side. I see no grounds much less substantial grounds to interfere with the well considered judgment and award passed by the Tribunal. The appeal lacks merits and bonafides.

18 Accordingly, the appeal is dismissed. No order as to costs. Consequently,

miscellaneous petition if any pending in this miscellaneous appeal shall stand closed. No order as to costs.

T.SUNIL CHOWDARY, J.

Date:16th April, 2015.

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