

IN THE HIGH COURT OF JUDICATURE, AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

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MACMA No. 2694 OF 2005

Between:

Devarapalli Suseela, W/o Kasi Reddy, Aged 34 years, R/o Sangadigunta

....Appellant/Petitioner

A n d

V. Ravi Kumar Raju S/o Laksmipathi Raju, Singarayakonda, Prakasam District and
one another

....Respondents

DATE OF JUDGMENT : 04.12.2015

HON'BLE MRS JUSTICE ANIS

MACMA NO. 2694 OF 2005

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J U D G M E N T :

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 08.06.2005, passed by the Chairman, Motor Accident Claims Tribunal –cum- VII Additional District Judge, (Fast Track Court) Guntur Chittoor, in M.V.O.P.No. 1169 of 2001, awarding compensation of Rs. 73,333/-.

2. The petitioner filed the above O.P. under Section 166 of the Act, claiming compensation of Rs. 1,50,000/- for the damages caused to her vehicle in a motor vehicle accident.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that the petitioner is a resident of Guntur and she is the owner of the lorry bearing No. ADW/7619. On 7.8.2001 the driver of her lorry was driving the same and when the said lorry reached near Peravali Road near Petrol Bunk, Tanuku on NH5 at about 8.50 a.m another

lorry bearing No. AP 27U/5447, which was coming from Ravulapalem side, driven by its driver in a rash and negligent manner at high speed and without blowing horn dashed the petitioner's lorry and as a result of which, the driver of the petitioner's lorry sustained injuries and her lorry was completely damaged and the driver was immediately shifted to a Government Hospital, Vijayawada, where he was treated for about 20 days. When the accident was reported, a case in Crime No. 110/2001 under Section 337 of IPC was registered against the driver of the first respondent's lorry bearing No. AP 27U/5447. The repairs, spare parts and labour charges for the petitioner's lorry were estimated at Rs. 1,10,000/- and she also claimed Rs. 40,000/- towards loss of earnings for a period of 40 days. The first respondent being the owner and the second respondent being the insurer of the lorry bearing No. AP 27U/5447 are jointly and severally liable to pay the compensation amount of Rs.1,50,000/- to the petitioner.

5. The first respondent remained ex-parte.

6. The second respondent filed written statement contending that there is no rash and negligent driving by its driver of the lorry bearing No. AP 27U/5447 and the driver of the petitioner's lorry was driving the said lorry in an opposite direction and was alone responsible for the said accident and since the accident was occurred due to the negligence of the driver of the petitioner's lorry, the insurance company was not liable to pay the compensation; that there was a collusion between two lorries and therefore, the accident was occurred only due to the contributory negligence on the part of both the drivers and the major portion of the negligence was contributed by the driver of the petitioner and hence, the petition is not maintainable for not impleading the driver and insurer of the lorry bearing No. ADW/7619, who are proper and necessary parties; that the insurance liability towards damages of the property was only fixed at Rs. 6,000/- and therefore, the petitioner cannot claim more than Rs. 6,000/- from the Insurance Company and prays that petition may be dismissed.

7. Basing on the pleadings, the Tribunal framed two issues and to substantiate the claim, petitioner herself was examined as PW-1 and examined PWs-2 to 4 and got marked Exs.A.1 to A.7 in support of her case. On behalf of the second respondent, no evidence was adduced.

8. After considering the oral and documentary evidence, the Tribunal awarded compensation of Rs.73,333/- to the petitioner along with 9% interest from the date of filing of OP till the date of deposit.

9. Not satisfied with the compensation awarded by the Tribunal, the petitioner preferred the present appeal.

10. The learned counsel for the appellant argued that the damaged lorry was kept idle in the shed for a period of about 40 days. Due to which, there was no income derived by the petitioner and the Tribunal has not considered that aspect and not awarded any compensation towards loss of earnings and therefore, prays this Court to enhance the compensation.

11. On the other hand, the learned counsel appearing for the second respondent submits that the Tribunal rightly considered the evidence on record and awarded the compensation at Rs. 73,333/- towards damages and therefore, prayed the Court to dismiss the appeal by reducing the rate of interest from 9% to 7.5% per annum.

12. Having regard to the submissions made by the learned counsel for both the parties, the points that arise for consideration are:

1. Whether the compensation awarded by the Tribunal is just and reasonable?

2. Whether the appellant is entitled for enhancement of compensation?

13. **POINTS:**

A perusal of the evidence of PWs 1 to 4 and Exs. A1 to A5, it is true that the accident was occurred due to rash and negligent driving of lorry bearing No. A.P.27U/5447 by its driver and the finding of the Tribunal regarding the manner in which the accident occurred needs no interference.

14. Coming to the quantum of compensation is concerned, It is no doubt true that the petitioner was not produced any evidence to prove that the vehicle was kept idle for carrying out the repairs. Therefore, the Tribunal rightly awarded Rs. 73,333/- towards damages to the vehicle. But it is no doubt true that the vehicle was kept idle for some

days for carrying out the repairs and during that period, the vehicle ought not to have been plied on the road. Considering this fact, the compensation granted to the petitioner by the Tribunal is enhanced from Rs. 73,333/- to Rs. 1,00,000/-.

15. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.73,333/- to Rs. 1,00,000/-. The enhanced compensation amount of Rs.26,667-, shall carry interest at 7.5% per annum in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in ***Sanobanu Nazirbhai Mirza and Others V. Ahmedabad Municipal Transport Service*** and ***Rebeka Minz and others v. Divisional Manager, United India Insurance Company Limited and another.***

16. In the result, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, pending if any, shall stand closed.

ANIS, J

DATE: 04.12.2015

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