

HON'BLE SRI JUSTICE G.SHYAM PRASAD

MACMA No.344 OF 2006

JUDGMENT:

This appeal is arising out of the order dated 29.07.2005 in O.P.No.1130 of 2001 on the file of Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (FTC), Nizamabad (for short "Tribunal").

2. The appellant herein - National Insurance Company Limited is the second respondent in O.P.No.1130 of 2001. The Tribunal awarded compensation of Rs.50,000/- along with interest @ 9% per annum from the date of petition till realization on account of damages caused to the vehicle of the claimant - first respondent herein. Being aggrieved by the said award, the appellant has preferred this appeal against grant of compensation.

3. The brief facts of the case are that the vehicle of the first respondent bearing No.AP21T 3291 was being dashed by a lorry bearing No.AP21T 3291 due to rash and negligent driving of driver of the lorry. The first respondent claimed compensation of Rs.1,50,000/-. The first second respondent herein, owner of lorry bearing No.AP21T 3291, has remained *ex parte* before the Tribunal. The appellant filed counter and contested the matter.

4. The Tribunal, on consideration of the evidence of P.W.1, the owner of the vehicle and P.W.2, who spoke about the damages caused to the van of P.W.1 and on consideration of the evidence adduced by the claimant i.e., Exs.A.1 to A.5, has awarded damages of Rs.50,000/-.

5. The point for consideration in this matter is whether there are sufficient grounds to set aside the impugned award of the Tribunal?

6. Sri A.Veera Swamy, learned counsel for the appellant submits that the Tribunal has recorded its findings basing on Ex.A.3 photographs and awarded notional damages of Rs.50,000/- He further submits that the first respondent herein has not produced any evidence to show that he got his vehicle repaired and the bills to prove that he has purchased spare parts from a particular garage and without all these evidence, he is not entitled for awarding any damages. On these grounds, he sought to set aside the award of the Tribunal.

7. Sri P.Radhive Reddy, learned counsel for the first respondent submits that the first respondent got examined himself and also examined another witness on his behalf to prove that his vehicle involved in the accident and it badly damaged. P.W.1 has also filed Ex.A.3 positive photographs six in number to show the extent of damages caused to his van in the accident. Therefore, he contended that the Tribunal has rightly appreciated the evidence of photographs and arrived at the right conclusion that the first respondent is entitled for damages of Rs.50,000/-.

8. The first respondent is the owner of a van. His van met with an accident. There is no dispute with regard to rash and negligent driving of the driver of the lorry. There is no dispute with regard to vehicle insurance of the lorry. The photographs Ex.A.3 filed before the Tribunal were not disputed by the insurance company.

9. Learned counsel for the appellant fairly submitted that there is no dispute with regard to photographs filed before the Tribunal, but submitted that the first respondent has not proved his case as he has not produced the bills showing that he purchased spare parts and bills for repairing the vehicle and therefore he is not entitled for damages.

10. Unfortunately this is a case where it is a fact that the accident has occurred and proved. A perusal of the photographs would clearly show that the vehicle is badly damaged. The claim of the first respondent was Rs.1,50,000/-. The Tribunal has awarded only Rs.50,000/- which is 1/3rd amount of the amount claimed.

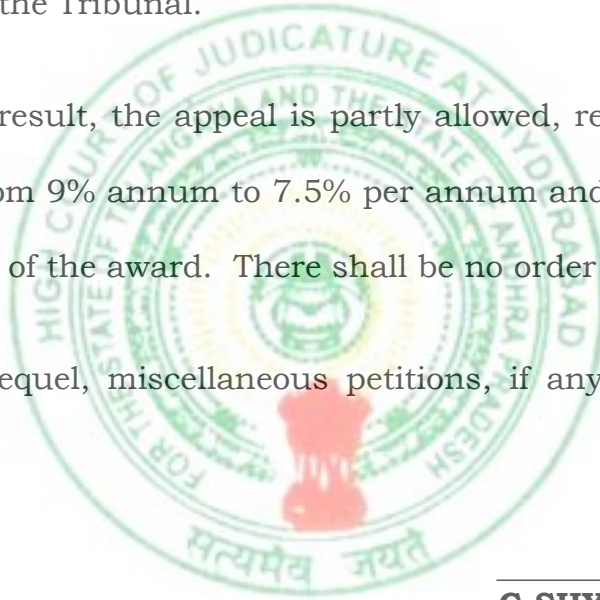
11. Since there is no dispute with regard to genuineness of the photographs, it can be safely concluded that the compensation awarded by the Tribunal is definitely reasonable and therefore I do not find any valid reason to interfere with the award passed by the Tribunal. The oral testimony of P.Ws.1 and 2 coupled with documents Exs.A.1 to A.5 clearly prove that the vehicle of the first respondent was involved in the accident and the liability of the crime vehicle is proved and the extent of damages is calculated by the Tribunal notionally. In a case like this, a notional damage only can be awarded by the Tribunal as just compensation. It is the duty of the Tribunal to consider all types of evidences to arrive at a correct conclusion. Mere documentary evidence is not only evidence which would prove the facts. The oral evidence coupled with documentary evidence considering the admissions of the parties the truth can be assessed. In the instant case, the damages caused to the vehicle can be proved by the photographs

filed in this case which is rightly appreciated by the Tribunal. Therefore, I do not see any valid grounds to interfere with the award of the Tribunal.

12. Learned counsel for the appellant contended that the Tribunal awarded interest @ 9% per annum which is excessive and submitted to reduce the rate of interest. On the submission of the learned counsel for the appellant, in the light of the decision reported in **Reshma Kumari vs.....**, the rate of interest is reduced from 9% to 7.5%. Except this, there is no modification in the award of the Tribunal.

13. In the result, the appeal is partly allowed, reducing the rate of interest from 9% annum to 7.5% per annum and confirming the other portion of the award. There shall be no order as to costs.

14. As a sequel, miscellaneous petitions, if any, pending shall stand closed.



G.SHYAM PRASAD, J

Date: 24.11.2016
TJMR