

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. Nos.1589 and 1587 of 2006

COMMON JUDGMENT:

These appeals are arising out of common judgment dated 18.01.2005 passed in M.V.O.P. Nos.346 and 350 of 2002 by the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Kurnool.

2. The appellants herein filed M.V.O.P. Nos.346 and 350 of 2002 respectively claiming compensation of Rs.1,88,891/- and Rs.45,000/- but subsequently the claim in M.V.O.P. No.350 of 2002 was restricted to Rs.25,000/-. But the Tribunal has awarded Rs.90,195/- in M.V.O.P. No.346 of 2002 and Rs.1500/- in M.V.O.P. No.350 of 2002.

3. Aggrieved by the orders passed by the Tribunal, the appellants herein approached this Court for enhancement of compensation and also on the point of contributory negligence.

4. Heard learned counsel for the appellants in both the appeals. Even though notice was served on respondent No.2, none appeared on his behalf.

5. Learned counsel for the appellants mainly contended that the Tribunal went wrong in holding that there is negligence on the part of the drivers of both the vehicles. It is submitted that the Tribunal relied on the evidence of RW.1

and came to the conclusion that there is contributory negligence on the part of RW.1—driver of the lorry. It is argued that this is a case of head on collision between the Tata Indica car and lorry and RW.1, who is the driver of the lorry, was examined as a witness in both the cases. It is further argued that RW.1 remained *ex parte* before the Tribunal and he has not filed any written statement. Thus, without there being any pleadings his plea should not have been considered by the Tribunal in assessing his liability.

6. It is further submitted that RW.1 was found guilty by the Criminal Court for his rash and negligent act as he admitted his guilt before the Criminal Court. He is the only person entirely liable for the accident, as such there cannot be any contributory negligence in these cases.

7. Learned counsel for the appellants placed reliance on the decision reported in ***Union of India vs Ibrahimuddin and another***¹, and submitted that the pleadings of the parties can be the basis for leading the evidence. Learned counsel for the appellants referred to para No.77 of the decision reads as follows:

“77.This Court while dealing with an issue in *Kalyan Singh Chouhan v. C.P.Joshi*², after placing reliance on a very large number of its earlier judgments including *Trojan & Co. v. Nagappal Chettiar*³, *Om Prakash Gupta v. Ranbir*

¹ 2012 (8) SCC 148

² (2011) 11 SCC 786 : (2011) 4 SCC (civ)656:AIR 2011 SC 1127

³ AIR 1953 SC 235

*B.Goyal*⁴, *Ishwar Dutt v. Collector (LA)*⁵ and *State of Maharashtra v. Hindustan Construction Co. Ltd*⁶, held that relief not found on the pleadings cannot be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in the absence of the pleadings in that respect. No party can be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. It was further held that where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon.

8. Learned counsel for the appellants further submitted that RW.1, the driver of the crime vehicle, without filing any pleadings before the Tribunal cannot give any evidence and, even if given, that cannot be given any credence in the absence of pleadings on his behalf. Therefore, the findings of the Tribunal basing on his evidence are not maintainable.

9. Learned counsel for the appellants further referred to the findings of the Tribunal with regard to Contributory negligence recorded in para No.13 of the judgment as under:

“13.Now coming to the evidence of PW.2, he stated in cross examination that he noticed the opposite lorry at a distance of five or six hundred yards and that he was proceeding at the minimum speed of 10 or 20 Kms at the time of the accident. But, he did not state anything in his evidence to that effect that the lorry overtook the tractor and hit the car. Whereas, he stated in the report given by him as evidenced from Ex.A1 that the lorry suddenly overtook a tractor and then dashed the car. Whereas, RW1 stated in his

⁴ (2002) 2 SCC 256 : AIR 2002 SC 665

⁵ (2005) 7 SCC 190 : AIR 2005 SC 3165

⁶ (2010) 4 SCC 518 : (2010) 2 SCC (Civ) 207 : AIR 2010 SC 1299

evidence that the driver of the car while overtaking a tractor which was proceeding in front of the car and hit the bumper of his lorry and that he could apply brakes and stop the vehicle as he was proceeding within controllable speed. This part of the evidence of RW.1 is neither denied nor contradicted by the petitioners while cross examining him. Therefore, this part of the evidence of RW.1 stood unchallenged. This version of RW.1 draws support and credence from the recitals in Ex.A1—FIR, which was registered basing on the report of PW.2. Therefore, this evidence of RW.1 which stood unchallenged and corroborated by the contents of Ex.A1 is sufficient to prove that PW.2 while overtaking a tractor proceeding in front of his car came in contact with the bumper of the lorry. At the same time, considering the fact that RW.1 admitted his guilt and he was convicted for causing this accident due to his negligent driving, it also cannot be said that there was no negligence at all on his part also. Therefore, in the circumstances it shall be held that both RW.1 and PW.2 contributed their might of negligence and rashness for the occurrence of this accident. Therefore, taking all the circumstances stated above into consideration, the negligence can be apportioned at 50% each to PW.2 and RW.1.”

10. In fact, the Tribunal has discussed the evidence of PWs.1 and 2 and RW.1 and came to the conclusion that there was contributory negligence on the part of both the drivers. There is elaborate discussion with regard to the manner in which the accident occurred and involvement of each of the driver of the vehicles contributing to the accident.

11. In the light of these evidences, the Tribunal has come to a specific conclusion that there is contributory negligence on

the part of both the drivers. The contentions raised by the learned counsel for the appellants are that RW.1 has not filed pleadings before the Court below and that is why his evidence cannot be considered is not acceptable. In view of the facts and circumstances of the case, in the light of the testimony of PW.2 and RW.1 and the document Ex.A1—FIR, the rash and negligent Act on the part of both the drivers is proved. The Tribunal also held that the testimony of RW.1 was unchallenged and it had corroborated the contents of FIR—Ex.A1. The Tribunal has properly appreciated the evidence of PW.1 and PW.2 and came to the right conclusion that there is contributory negligence on the part of both the drivers.

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12. Learned counsel for the appellants submitted that the Tribunal has not awarded any amount towards the damages of clothes, though the appellant has claimed Rs.2,000/-. As far as this contention is concerned, the appellant is entitled for damages of clothes an amount of Rs.2,000/-. Therefore, the amount of Rs.2,000/- is awarded towards damage of clothes.

13. Learned counsel for the appellants submits that the appellant had traveled from Kurnool to Hyderabad for taking treatment but the Tribunal has not awarded any compensation towards transport charges. The claim of the

appellant is Rs.2,000/-. Therefore an amount of Rs.2,000/- is awarded towards transport charges.

14. It is further submitted that the appellant had claimed medical expenditure and extra nourishment of Rs.6,000/- and, for medical expenditure of Rs.12,500/- but the Tribunal has awarded only an amount of Rs.3,000/-. As the Tribunal awarded inadequate amount under these heads, an amount of Rs.6,000/- towards medical expenditure and extra nourishment, and an amount of Rs.12,500/- towards treatment and pain suffering is awarded. The compensation enhanced in this appeal is shown in the tabular form.

Sl. No.	Name of the Head	Awarded by the Tribunal	Enhanced compensation
1	Special damages	--	Rs.2,000/-
2.	Transport charges	--	Rs.2,000/-
3.	Medical and extra nourishment	--	Rs.6,000/-
4	General damages for treatment of three injuries	Rs.3,000/-	Rs.12,500/-
5	Pain and suffering	--	Rs.6,000/-
Total		Rs.3,000/-	Rs.28,500/-

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15. Learned counsel for the appellant further submits that the Tribunal has not awarded the transport charges of

Rs.8,500/- for transporting the vehicle from the place of accident to the place where it was repaired. No doubt, the Tribunal has not awarded compensation towards the transport charges of Rs.8,500/- for transporting car from the place of accident to the place where it was repaired. The Tribunal has not given any reasons for disallowing the transport charges. Admittedly, the accident occurred in the Kurnool District and the car was repaired in Hyderabad. The Tribunal, having observed that the car was badly damaged, did not award any transport charges. The transport of the car in such a condition from Kurnool to Hyderabad for getting it repaired would definitely incurred some expenditure. Therefore, the claim of the appellant Rs.8,500/- for transporting the vehicle from the place of accident to the place where it was repaired is allowed.

16. In the result, both the appeals are partly allowed.

a) M.A.C.M.A. No.1589 of 2006 is partly allowed enhancing the compensation from Rs.90,195/- to Rs.1,15,695/-. Out of the enhanced compensation amount of Rs.28,500/-, 50% is payable to the appellant by the respondent. Therefore, the appellant is entitled to receive an amount of Rs.14,250/- with proportionate costs and interest @ 9% per annum from the date of petition till realization.

b) M.A.C.M.A. No.1587 of 2006 is partly allowed enhancing the compensation from Rs.1500/- to Rs.5,750/-

with proportionate costs and interest at 9% per annum from the date of petition till the realisation.

c) The respondent is directed to deposit the entire amount within one month from the date of receipt of copy of this order. On such deposit, the appellants herein are permitted to withdraw the entire amount without furnishing any security.

d) There shall be no order as to costs.

e) Miscellaneous petitions, pending if any, in these appeals shall stand closed.

Dt.25.10.2017.
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GUDISEVA SHYAM PRASAD, J

