

* SMT JUSTICE T. RAJANI

+ MA CMA No.412 of 2008

% 03.11.2017

Kaluvala Yellaiah

... Appellant

Vs.

\$ Korrapati Bharath Kumar and others

... Respondents

! Counsel for the petitioner : Sri Kaluvala Yellaiah

Counsel for the Respondents: Sri M.S.Srinivasa Iyengar

< Gist :

> Head Note:

? Cases referred:



SMT JUSTICE T. RAJANI

MA CMA No.412 of 2008

ORDER:

This appeal is preferred by the appellant, who is the claimant before the Court below, assailing the judgment of the I Additional District Judge, Kadapa in OP.No.285 of 2006, dated 12.10.2007, on the grounds that the court below did not award adequate compensation and did not consider the documentary evidence while deciding the issues and failed to consider the evidence of PWs.2 and 3, while awarding compensation.

2. Heard both sides.

3. The claim was for the damages of the vehicle, which were sustained in a motor accident, which occurred on 21.12.2005. The accident involved two vehicles. The court below, considering that it is a case of head on collision, apportioned the negligence between the two vehicles equally and reducing the compensation of Rs.61,070/- by 50%, it awarded Rs.32,642/- as compensation to the claimant.

4. NEGLIGENCE: A perusal of the judgment, under issue No.1, which dealt with the aspect of negligence, shows that the court went by the singular fact of the accident being a head on collision and assumed negligence on the part of the vehicle of the claimant also. It observed that if PW1 therein had driven the vehicle diligently, he would have avoided the accident. But the charge sheet, which is filed after due investigation, is only

against the other vehicle. The court did not have any other basis to differ from the conclusion drawn in the charge sheet, except that it was a case of head on collision. The said reasoning of the court below does not seem to be sustainable, as, when the evidence brought before the court would point only towards the negligence of the other vehicle, there need not be any reason to make an assumption, more so, when no evidence is adduced by the respondent to disprove the fact that is established by the charge sheet.

The panchanama, Ex. A11, shows that damages were only to the Eicher van. A clue can be taken from that fact also that the negligence was on the part of the other vehicle. Hence, the judgment of the court below under issue No.1, concluding negligence on the part of the drivers of the two vehicles, is set aside and it is held that the accident occurred due to the negligence of the driver of the crime vehicle i.e., Mahendra Bolero Jeep bearing No.AP 20F 5540.

5. COMPENSATION: As regards the quantum of compensation, the court below elaborately discussed about the evidence adduced in proof of the damages and expenses incurred for the repairs of the vehicle and arrived at the conclusion, which it has arrived at. The evidence of PW2 is that of a person running a workshop, where the vehicle of the claimant was repaired. According to his evidence, he took up the repairs of the vehicle. He noticed several damages and at the request of the claimant, he gave an estimation of Rs.2,50,000/-.

The claimant purchased the spare parts as per requirement and delivered them to him. Thereafter, he completed the repairs within two months. He stated that he issued bills dated 25.01.2006 for Rs.12,600/-, Rs.2,400/- and Rs.3,500/- respectively marked under Ex.A5 and the rest of the bills marked under Ex.A5 are stated to be the bills for purchase of spare parts. He concluded by saying that the claimant spent about Rs.1,00,000/- towards damages for purchase of spare parts and replacement of the damaged spare parts. He also explains that though he gave estimation for Rs.2,50,000/-, the petitioner could not spend the amount for replacement of chasis and cabin and on his request, he repaired the vehicle partly and delivered the same.

6. The claimant, who was examined as PW1, did not state anywhere in his evidence about the reasons for not getting the vehicle repaired totally. He also spoke about the estimate given by PW2. But however, the evidence of PW2 can be taken as proving the fact that all the damages that were seen by him were due to the accident. The damages that were stated by him are, 1) Chasis assembly was bent, 2) Front portion of the cabin was damaged, 3) Totally glasses were broken. 4) Front springs were damages, 5) Self dynamo and charging dynamo were broken, 6) Engine gear box damaged, 7) Body also bent, and 8) wiring system damaged. Though it cannot be said conclusively that the wiring system was damaged in the accident, the other damages can only be when the vehicle gets involved in the accident. In the light of those damages, it can be inferred that

the damage of the wiring system is also due to the accident and consequent to the other damages. Hence, in the light of the above fact, the inability of the claimant to get the total repairs of the vehicle done can be understood to be for various reasons, one of which may be lack of funds and hence, it can be accepted that the estimate given by PW2 is the estimate for the repairs of the vehicle in respect of the damages noticed by him and which are caused by the accident.

7. The court below took the evidence of PW3 and RW1 into consideration for not accepting the evidence of PWs.1 and 2. PW3 is a private Surveyor. He assessed the damages and arrived at a loss of Rs.61,017/-. He took 50% of the depreciation into consideration while arriving at the said figure. The court below did not consider the said aspect as not having any bearing, while assessing the damages caused to the vehicle. If it is a sale of the vehicle and the estimate is for the value that the vehicle would be fetching, then the question of depreciation would come in. When a vehicle gets involved in an accident and when it requires replacement of spare parts, assessing the spare parts of the damaged vehicle by adopting the depreciation method, is not at all proper. Hence, the estimation made by PW3 cannot be taken as a basis for awarding compensation in this case. The evidence of RW1 shows that a surveyor was appointed by them and the said surveyor gave a report. The said report, as observed by the lower court, does not throw any light on the extent of the damages and it does not help the court for assessment of the damages. Ex.A11 Panchanama, shows that the damages were

estimated as Rs. 80000/- . There are three datas for damages. Which of them is more reliable has to be understood. The estimate of the Surveyor, PW.3, is already declared as not correct. The amount in the panchanama has no basis at all. What remains is the estimate given by PW2, which is more credible, he being the person who affected the repairs. His evidence also inspires confidence when he does not say that he affected all the repairs. But the estimate, marked as Ex. A.8, shows some writings and rounded off figures, which are not explained either by PW.1 or PW.2. Even the towing charges are rounded off and written as Rs.2,000/-. Reduced figures are written against some figures. The understanding would be that the figures in Ex.A8 are not the final figures estimated by PW2. PW.1 does not speak about them. He already sold the vehicle. Whether he sold it for less price by considering the non affected repairs or otherwise, is not stated by him. Hence going by the evidence of PW.2 that only 1,00,000/- is paid to him, one lakh should be the award for damages.

8. The evidence of PW2 can also be perused to see as to what was the period required for the repair of the vehicle. The vehicle was brought to their workshop in the moth of December, 2005 after five days of the accident and he issued bills on 25.01.2006. He completed repairs within two months. Though it can be considered that the bills were issued in the month of January, the date of accident is stated to be 21.12.2005. The bills would be issued only after the repairs are effected. Hence, one month can be taken as the period for, which the vehicle was under

repairs. The evidence of PW1 is that he sustained loss due to the vehicle being idle and that he was earning Rs.6,000/- and odd per month but since there is no evidence in proof of the income that was being earned by the claimant, Rs.3,000/- is taken as the earnings of the claimant and Rs.3,000/- is awarded. Apart from that, Rs.2,000/-, which are the charges paid for the shifting of the vehicle to the garage, as reflected in Ex.A.8, can also be awarded as the said expenditure is probable. Hence, the award amount is enhanced to Rs.1,05,000/- which includes the damages of Rs.1,00,000/-, Rs.3,000/- towards loss of earnings of the claimant + Rs.2,000/- towards charges for shifting of the vehicle to the garage. In all, the claimant is entitled to Rs.1,05,000/- .

9. The appeal is, accordingly, partly allowed by setting aside the judgment of the court below and the compensation is enhanced to Rs.1,05,000/- with proportionate costs. This award shall relate back to the date of decree and the enhanced compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

November 3, 2017
LMV

Note:-

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