

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 955 of 2009

JUDGMENT:

This appeal is arising out of the order dated 16.10.2007 in O.P.No.337 of 2005 on the file of Motor Accident Claims Tribunal-cum-II Additional District Judge, Warangal.

2. Brief facts of the case are that the petitioner is the Maruthi Car Owner bearing No.AP 9E 2512. He is a businessman dealing in Gold business at Warangal. On 07.04.2003, he handed over his car to the driver to drop his friends at Parkal from Hanamkonda. When the car was proceeding from Hanamkonda to Parkal side, and reached near Orugonda Outskirts, a tractor-trailer bearing No.AP-73-3274/3275, was parked on the middle of the road, with mechanical defect. On noticing a vehicle coming in the opposite direction, the driver of the car slowed down the car behind the parked tractor-trailer, in order to give way to the vehicle coming from opposite direction. In the meantime, another tractor-trailer bearing No.AP-36V-3110/3112, which is also proceeding from Hanamkonda towards Mulugu, came from behind in a rash and negligent manner, without observing the vehicle coming in opposite direction, and also without observing the Maruti Car, dashed the Maruthi Car from behind, as a result of which, the persons traveling in the Maruti Car succumbed to injuries. The driver of the Maruti Car died on the spot. After the accident, the petitioner got towed the vehicle from the accident spot to P.S., Athmakur, where the survey was conducted by the licenced Insurance Surveyor, and loss assessor, who assessed repairing charges

at Rs.99,776/-. After the assessment, the petitioner got towed his Car to Suguna Motors Private Limited, Hanamkonda, and they estimated the repair charges at Rs.2,05,392/- for the repair. As the repair charges were higher than a new car, the petitioner kept the car idle. The petitioner has not taken compensation as the policy covered by the Maruthi Car is an Act policy. On the complaint given by Mandala Raji Reddy, the Police, Athamkur, registered a case in Crime No.61/2003 for the offence under Section 304-A IPC, against the driver of tractor-trailer No.AP-36U-3110/3112.

Alleging that the accident occurred, due to the rash and negligent driving by the driver of the offending tractor-trailer, the petitioner filed the claim petition O.P.No.337 of 2005, claiming compensation of Rs.2,32,632/- towards damages caused to his Maruthi Car.

The first respondent-owner and the offending tractor-trailer remained exparte. The second respondent-insurance company filed counter denying its liability, and also denying the allegations in the claim petition.

The Tribunal, on consideration of the evidence of witnesses PWs.1 and 2, and the documents Exs.A1 to A4; and Exs.B1 and B2, has held that the accident occurred due to the rash and negligent driving by the driver of the offending tractor-trailer, and therefore, awarded compensation of Rs.60,000/- to the petitioner, with interest at 7.5% per annum, from the date of petition till realisation.

Aggrieved by the order passed by the Tribunal, the second respondent-insurance company has preferred the present appeal.

3. The main contention of the learned counsel for the appellant is that the Tribunal can grant damages as per the provision under Section 165 of the Motor Vehicles Act, 1988, and as per the said provision, more than Rs.6,000/- in case of damages caused to vehicle in an accident cannot be awarded. Therefore, granting of Rs.60,000/- by the Tribunal is not in accordance with law.

4. The contention of the learned counsel for the respondent is that the Tribunal has passed award considering the original survey report of the insurance company Ex.A3 and the survey fee bill Ex.A4. The insurance policy is a package policy. Therefore, there is coverage of insurance for the third party claim for injuries, death and damages.

5. The point for consideration in this matter is whether the Tribunal can award compensation of more than Rs.6,000/- under Section 165 of the Motor Vehicles Act, 1988.

6. Section 165 of the Motor Vehicles Act, 1988, reads as under:

Section 165 in The Motor Vehicles Act, 1988

165. Claims Tribunals.—

(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Explanation.—For the removal of doubts, it is hereby declared that the expression “claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles” includes claims for compensation under section 140 1[and section 163A].

7. The petitioner is the owner of motor car bearing number AP 9E 2512. The petitioner handed over his car to the driver to drop his friends at Parkal from Hanamkonda. The accident occurred on the way. The Tribunal held the driver of the crime vehicle (tractor-trailer bearing No.AP 36U 3112) was rash and negligent. The petitioner claimed Rs.2,00,000/- towards damages to his car. The Tribunal awarded Rs.60,000/- with interest at 7.5% per annum against the insurance company.

8. The contention of the insurance company is that the Tribunal cannot award compensation of more than Rs.6,000/- under Section 165 of the Act. There is no dispute with regard to the involvement of the vehicle of the petitioner in the accident. The Tribunal clearly held that there is ample evidence on record to show that the vehicle was involved in the accident and it was damaged to an extent of Rs.60,000/-, though the claim of the petitioner was Rs.99,766/-.

9. The petitioner admittedly is a third party to the vehicle involved in the accident. The damage to the car of a third party can be claimed under Section 165 of the Act. The restriction was Rs.6,000/-. The Tribunal, on consideration of the evidence, has determined the compensation after due inquiry. Therefore, there is no illegality in granting the compensation in this matter as per Section 166 of the Act. Section 165 of the act clearly reveals that the Claims Tribunal can adjudicate claims for compensation in respect of accidents involving death of, or bodily injury to persons arising out of the use of motor vehicle arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

10. In the instant case, the Claims Tribunal has adjudicated upon the claim of the petitioner as to the damage of his car and awarded damages of Rs.60,000/-. Therefore, there is no need to interfere with the award passed by the Tribunal.

11. **IN THE RESULT**, the appeal is dismissed, confirming the order passed by the Tribunal in O.P.No.337 of 2005, dated 16.10.2007. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

14th September, 2018

KSM



THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



M.A.C.M.A. No. 955 of 2009

14th September, 2018

KSM