

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2334 OF 2006

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 28.07.2006 passed in O.P.No.1434 of 2003 by the I Additional Metropolitan Sessions Judge, Hyderabad (for short, the Court below).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Court below in the original petition.

3. The brief facts of the case are that the petitioner was running a shed in the name and style of Khaja Automobile workshop in the premises bearing No.10-5-2/7/G/4 as a tenant on a monthly rent of Rs.6,000/-. On 14.07.2001 at about 4.00 p.m., while the petitioner was working in his workshop, one lorry bearing No.APT-5323 came from pension office road, Banjara Hills, Hyderabad, in a rash and negligent manner and dashed to two wheelers (2 nos.) and to one Fiat car and dashed to his office room, due to which the vehicles were badly damaged and also office room of the petitioner was completely collapsed. The estimates of the damage to the office is about Rs.50,000/- and to the machinery i.e., lathe machine was damaged to a tune of Rs.1,00,000/- and two motor bikes i.e., Hero Puch bearing No.AP-11-6153 was very badly damaged and another motorcycle of the petitioner's client i.e., Suzuki motorcycle bearing No.AP-28L-4095 and a Fiat NE-118 bearing No.AP-9M-2952 was also

damaged to a tune of Rs.60,000/-. Due to the said accident, he closed his workshop for a period of one month and he sustained loss of Rs.60,000/-. Hence, the petitioner filed the claim petition claiming compensation of Rs.3,00,000/-, payable by both the respondents, being the owner and insurer of the offending lorry.

4 Before the Court below, the 1st respondent remained *ex parte*. Respondent No.2 filed counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral evidence of P.Ws.1 to 3 and the documentary evidence of Exs.A-1 to A-14 & Ex.B-1, the Court below came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending lorry and awarded total compensation of Rs.30,000/- i.e., Rs.20,000/- towards reconstruction of the room, Rs.5,000/- towards damages to chairs, tables and tools and Rs.5,000/- towards damages to the Lathe machine. The liability of the 2nd respondent is restricted to only Rs.6,000/- with interest @ 9% per annum since Section 147(2)(b) of the Motor Vehicles Act specifically restricts the liability of the insurer to Rs.6,000/- in respect of damage to the property of third party. The remaining amount of Rs.24,000/- shall be recovered from the owner of the offending lorry i.e., the 1st respondent, with interest @ 9% per annum with proportionate costs payable by the respondents.

Dissatisfied with the quantum of compensation, the appellant filed the present appeal, seeking enhancement of the same.

6. Heard Sri P.Venkat Ram Reddy, learned counsel appearing for the appellant and Sri N.J.Sunil Kumar, learned standing counsel appearing for the 2nd respondent/insurance company. Perused the material available on record.

7. Admittedly, the Court below has not awarded any amount towards the damage caused to Premier 118 (138/D) bearing No.AP-9M-2942 as per Ex.A-7 and the damage caused to Hero Puch bearing No.AP 11A 6153 as per Ex.A-8. Therefore, this Court is inclined to award an amount of Rs.10,000/- towards damages of both the vehicles.

8. With regard to fastening of liability is concerned, in the similar circumstances, the Hon'ble Supreme Court in **Shivaraj Vs. Rajendra**¹, directed the insurance company to pay the compensation amount at the first instance and recover the same from the owner of the crime vehicle. Therefore, this Court feels that it is just and reasonable to invoke the principle of 'pay and recover'. Except the said enhancement and modification, rest of the award remains un-changed.

9. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by enhancing the compensation amount awarded by the Court below from Rs.30,000/- to Rs.40,000/-.

¹ 2018 AIR (SC) 4252

payable by respondents 1 to 3 jointly and severally. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till the date of realization. The 2nd respondent/insurance company is directed to pay the compensation amount at the first instance and recover the same from the 1st respondent/owner of the offending lorry. The 2nd respondent/insurance company is directed to deposit the enhanced amount along with proportionate costs and interest within two (02) months from the date of receipt of a copy of this order and recover the same from the 1st respondent. On such deposit, the appellant is permitted to withdraw the entire amount. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

T.AMARNATH GOUD, J

Date: 22nd November, 2019

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