

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.1770 of 2005

JUDGMENT:

This Appeal is filed by the claimant against order and decree dated 14.05.2004 in OP No.514 of 2000 wherein and whereby the Chairman-Motor Accidents Claims Tribunal-cum-1st Additional District Judge at Nizamabad, (for short 'the Tribunal') partly allowed the claim petition by granting Rs.6,000/- out of Rs.1,00,000/- claimed by the claimant, for enhancement of compensation.

2. For the sake of convenience, the parties hereinafter will be referred to as arrayed in the Original Petition. Brief facts which are necessary for disposal of this Appeal are as follows:

The petitioner is the owner and possessor of Tractor bearing No. AP 25T 1208 and that on 18.12.1998 while one Karrolla Ramuloo was driving the said tractor from Bodhan towards Ranampally village and when the said lorry reached in the limits of Rudrur village at about 2.30 p.m, the offending lorry bearing No. APJ 1933 being driven by its driver in rash and negligent manner and in high speed, and dashed against the tractor in opposite direction and that in the said accident, the said tractor

went off the road and fell in a ditch. One Ashok, who was travelling in the said tractor as labour received grievous injuries and the driver of the offending lorry died on the spot and that the said tractor completely damaged. The accident occurred due to rash and negligent driving of the offending lorry and there was no fault on the part of the driver of the tractor. On account of damage caused to the tractor, the petitioner got ploughed his fields and transport agricultural material with another tractor and that the tractor was idle for a long time and that in all he sustained loss of Rs.1,00,000/- for the damage caused to the tractor and thus he claimed compensation of Rs.1,00,000/- against respondents 1 and 2.

3. The 1st respondent filed written statement and denied the manner of accident pleaded by the petitioner and also taken the plea that the said offending lorry was duly insured with the 2nd respondent under policy No.31/606/1986-86 and that was valid from 1.8.1998 to 31.07.1999 and prayed to dismiss the petition.

4. The 2nd respondent also file counter affidavit denying the averments in the affidavit filed in support of the petition stating that the driver of the offending lorry was not at all rash and negligent and the accident

occurred due to rash and negligence of the driver of the tractor and that no damage was caused to the tractor. The petitioner has to prove that the driver of the said lorry was having valid and subsisting driving licence and that the offending vehicle was having necessary vehicular documents at the item of accident and that it was duly insured with the 2nd respondent covering the total risk in respect of damage caused to the vehicle. That the compensation claimed is highly excessive and that the driver and insurer of the tractor bearing No. AP 25T 1208 are necessary parties and that the petition is bad for non-joinder of necessary parties and prayed to dismiss the petition.

5. Based on the above pleadings, the following issues were framed by the Tribunal.

1. Whether the accident was due to the rash and negligent driving of the lorry bearing No.APJ 1933 by its driver?
2. Whether the petitioner is entitled for compensation? If so, what amount and against which of the respondents?
3. To what relief?

6. To prove the case of the petitioner, P.Ws.1 to 3 were examined and got marked Exs.A1 to A17. On behalf of the respondents, R.W.1 was examined and Exs.B1 and B2 got marked on its behalf.

7. The Tribunal, after considering both the oral and documentary evidence adduced on either side, granted only Rs.6,000/- (Rupees six thousand only) to the petitioner with proportionate costs and interest at 9% per annum from the date of petition till date of realization. Aggrieved by the same, petitioner filed the present appeal.

8. Learned counsel for the petitioner submits that though the petitioner produced evidence and P.W.1 spoke about the accident and causing of damage to the vehicle, only an amount of Rs.6,000/- was granted towards compensation in view of Section 147(2)(b) of the Motor Vehicles Act. He submits that a new tractor was purchased in the year 1995 for Rs.1.50,000/- and trolley was purchased for Rs.1,10,000/- and that when the tractor was damaged in the accident, the same was sold as scrap for Rs.35,000/-.

9. On the other hand, Sri Katta Lakshmi Prasad, learned Standing Counsel appearing for 2nd respondent-insurance company submits that there is no proof regarding damage to the vehicle of the petitioner and in view of the same, the Tribunal granted an amount of Rs.6,000/- and fixed the liability on the insurance company. He further submits that

Ex.B1 policy is only 'Act' policy and no premium is paid to cover the risk of unlimited damage caused to the third parties property and hence, in view of the provisions of Section 147(2)(b) of the Act, the insurance company is liable to pay only a sum of Rs.6,000/- to the petitioner in respect of the damage caused to his tractor.

10. In this case, it is to be seen that the manner in which accident had occurred is not disputed. Since this appeal is filed only for enhancement of compensation and fixing of liability on the insurance company, it is not necessary to go into other issues. The Tribunal, while deciding the issue No.2 regarding fixing of liability came to the conclusion that the petitioner is entitled only Rs.6,000/- as per Section 147 (2)(b) of the Act and fixed the liability on the insurance company. The evidence of P.W.1-petitioner goes to show that he sold the tractor for Rs.35,000/-, as it was not fit for repair and therefore, he claims compensation of Rs.1,00,000/-. The Tribunal also found that there is no evidence to show that the petitioner purchased the tractor for Rs.1,50,000/- and trolley for Rs.1,10,000/- as no documentary evidence is produced. The Tribunal also found that the

petitioner has not filed any documents evidencing that he sold the tractor for Rs.35,000/-. The evidence of P.W.1 and exhibits marked on his behalf also goes to show that there are no details mentioned in the claim petition. The Tribunal, basing on the photographs and registration certificate, the Tribunal has granted an amount of Rs.6,000/-.

Since the Tribunal passed Award basing on the oral and documentary evidence adduced on either side, this Court is not inclined to interfere with the findings of fact arrived at by the Tribunal.

Accordingly, this Appeal is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Appeal, shall stand closed.

A.RAJASHEKER REDDY, J

14-03-2019
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