HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.3517 of 2005

ORDER:

This appeal is preferred by the petitioner in O.P.No.1190 of 2002 on the file of the I Addl.Metropolitan Sessions Judge-cum- XV Addl.Chief Judge, Hyderabad, under Section 166 (1) (a & b) of the Motor Vehicle Act, 1988 and Rules 455 and 476 of the A.P.Motor Vehicle Rule, 1989, r/w amended Act 54 of 1994 (for short, 'the Act'), dissatisfied with the award dated 08.09.2005 granting a sum of Rs.9,000/- towards compensation as against Rs.81,772/- for the damages caused to his car by the respondents.

2. The appellant herein is the claimant, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the offending vehicle bearing No.AP 9AM 915 that involved in the accident, are respondent Nos.1 and 2, respectively, in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 21-06-2002, at about 01.30 a.m., when the petitioner, his wife along with their two children were returning to their house at Venkateshwara Colony, Erragadda, Hyderabad, in their

Tata Indica Car bearing No.AP 9AC 801, after attending a dinner party at Banjara Hills and after reaching Saradhi Studios Juction, the 1st respondent drove his Hero Honda Motor Cycle bearing No.AP 9AM 915, in a rash and negligent manner and dashed against the petitioner's car at great speed in a state of intoxication. Due to the rash and negligent action of the 1st respondent under intoxication state, the petitioner's car was damaged and the estimated cost given by the company for repairing the petitioner's car is at Rs.71,772/-. The police S.R.Nagar P.S have registered a case bearing No.931/2002, STC No.103/2002 under Section 184 and 185 of the M.V.Act against the rider of the Hero Honda Motor Cycle, as such the petitioner claimed Rs.81,772/- towards compensation for the damages caused to his car.

5. The 1st respondent is the owner and 2nd respondent is the insurer of the offending vehicle.

6. The 1st respondent set exparte and the 2nd respondent filed counter denying the averments in the petition and called for strict proof of the facts mentioned in the petition. He also contended that the 1st respondent in a drunken state caused the accident and thereby violated the conditions of the policy, and as such, the insurance company cannot be made liable to pay compensation. He

further submits that as petitioner has already claimed damages against his insurer and in view of the said settlement arrived by the petitioner and his insurer an amount of Rs.32,700/- was paid to the petitioner, therefore, the petitioner cannot make claim against the 2nd respondent twice for the same damages caused to his car.

7. The Tribunal framed the following issues:

> *"1. Whether the car bearing No.AP 9C 801 was damaged due to the accident that took place on 22.06.2002 with the Hero Honda motorcycle bearing No.AP 9AM 915?*
> *2. Whether the petitioner is entitled for any damages to his car because of the accident?*
> *3. Whether the accident took place due to the rash and negligent driving of the Hero Honda vehicle by its driver in a state of intoxication?*
> *4. Whether the petitioner already claimed the damages from the insurance coverage of his own car and whether the claim is already discharged by the petitioner's insurer M/s.National Insurance Company?*
> *5. To what relief ?"*

8. During enquiry, on behalf of the claimant, he himself examined as PW1 and Exs.A1 to A15 are marked. On behalf of 2nd respondent-Insurance company, RW1 is examined and got marked Exs.B1 and B2.

9. The Tribunal, basing on the evidence of PW1 and basing on the contentions of respondent No.2 coupled with

documentary evidence Ex.A1 held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle and accordingly answered Issue Nos.1 and 3 in favour of petitioner.

10. On issue Nos.2 & 4, though the petitioner claimed Rs.81,772/- towards damages the Tribunal has taken Exs.A7 to A9, A14 and A15-receipts for Rs.62,544/- as genuine receipts for the purpose of calculating the amount spent by the petitioner towards damages since no rebuttal evidence is placed by the 2nd respondent to disprove these documents. Thereafter, deducting 1/3rd towards depreciation, and Rs.32,700/- towards the amount recovered by the petitioner from his insurance company, arrived at Rs.9,000/- (62,544 – 1/3rd – 32,700 = 8,996) and granted the said amount as compensation to the petitioner towards damages with interest @ 6% p.a. from the date of petition till the date of realization.

11. So far as the liability of the respondents is concerned the Tribunal held that since the 1st respondent has not paid the additional premium of Rs.75/- to convert the limited liability to unlimited liability, the 2nd respondent is liable to pay only Rs.6,000/- to the petitioner and the remaining amount of Rs.3,000/- has to be paid by the 1st respondent. The Tribunal also held that 2nd respondent is not liable to

indemnify the owner-1st respondent since the 1st respondent violated the conditions of the policy, and as such given liberty to the 2nd respondent to recover the amount of Rs.6,000/- from the 1st respondent by filing execution petition against the 1st respondent without resorting to file a suit.

12. Dissatisfied with the award of compensation granted by the Tribunal, the petitioner preferred the instant appeal impugning the award seeking for enhancement of compensation with interest there on and costs.

13. Heard both sides.

14. Now, the short point that arises for consideration is, whether the appellant is entitled to enhancement of compensation ?

15. Learned counsel for the appellant submits that the Tribunal should not have deducted Rs.32,700/- which the petitioner claimed from his insurer i.e.M/s.National Insurance Company, as the petitioner had comprehensive policy. He also submits that the petitioner was not granted any amounts towards loss of use of vehicle.

16. It is to be seen that though the petitioner claimed compensation at Rs.81,772/- he has submitted documents i.e. Exs.A7 to A9, A14 and A15-receipts, in proof of repairs

to a tune of Rs.62,544/-. To disprove the said documents the 2nd respondent also did not produce any rebuttal evidence. As such, the Tribunal rightly taken into account Rs.62,544/- as the amount spent by the petitioner towards repairs of his vehicle. As such, the said amount has to be taken into consideration for calculating the damages.

17. Further, admittedly, petitioner/appellant claimed Rs.32,700/- from his insurance company i.e. M/s.National Insurance Company and the petitioner again cannot claim amount from the respondents for the same accident. As such, the Tribunal rightly deducted the said amount and granted compensation by relying on the Judgment rendered by this Court in ***New India Assurance Company limited, Mdaras v. T.M.Chayapathi [2004 (5) ALD],*** which cannot be interfered.

18. Though the petitioner filed Ex.A2 regarding the age of the vehicle, the Tribunal held that no document is filed in proof of age of the vehicle, which is erroneous. As such, reducing the amount by 1/3rd towards deprecation is bad.

19. In view of the above, the amount received by the petitioner from his insurance company, only, has to be deducted from out of the amount spent by the petitioner towards damages for the purpose of calculating compensation. In view of the same, the petitioner is entitled

to Rs.29,844/- (62,544 – 32700) towards compensation for damages caused to his vehicle. Since the appeal is dismissed against the 2nd respondent, no relief can be granted in this appeal against R2.

20. Accordingly, the MACMA is partly allowed enhancing compensation awarded by the Tribunal from Rs.9,000/- to Rs.29,844/- against R1. The appellant is entitled to interest on the enhanced compensation of Rs.20,844/- at 7.5% per annum from the date of petition till realization.

As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY, J

15.02.2019
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