HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

M.A.C.M.A.Nos.3437 and 3448 of 2005

<u>COMMON JUDGMENT:</u>

Both these appeals have been preferred by the New India Assurance Company Limited, the fourth respondent in M.O.P.Nos.1378 and 1380 of 2003 respectively, on the file of the Chairman, Motor Accidents Claims Tribunal – cum- IX Additional District and Sessions Judge (Fast Track Court), Visakhapatnam, aggrieved by the orders dated 24.06.2005.

The Tribunal has disposed of both the O.Ps. on the same day, by apportioning the liability to the extent of 50% each between the owner of the auto and its insurer, and the owner of the lorry and its insurer, which were involved in the accident on account of a direct collision, by determining the compensation at Rs.21,700/- and Rs.92,200/- as against the claims of Rs.1,00,000/- and Rs.1,60,000/- respectively, laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, by two different petitioners who sustained injuries in one and the same accident.

For convenience sake, the parties hereinafter referred to as they were arrayed before the Tribunal in the O.Ps.

Facts, in brief, are that, on 07.07.2002, the petitioner, in the former appeal, along with others started at Talapulammalova to go to D.Polavaram and boarded an auto bearing No.AP5 X 9649 and, when it reached near milk centre bye-pass road, Tuni, a lorry bearing No. AP 36 T 5297 driven in a rash and negligent manner at a high speed, came in opposite direction, and since the auto driver was driving it at high speed, a collision took place resulting in the auto turning upside down causing injuries to the inmates of the auto. The petitioners claim that they were shifted to Community Health Centre, Tuni and, again, to KGH, Visakhapatnam.

The petitioner, in the former appeal, states that he took treatment for one month as an inpatient and spent huge amount towards medical expenses, whereas, the petitioner, in the latter appeal, claims that she has undergone treatment for 40 days as an inpatient in KGH hospital at Visakhapatnam and spent huge amount towards medical expenses and suffered disability and not in a position to attend tailoring works and, consequently, it affected her earning capacity. Thus, both of them sought the aforementioned amounts as compensation from respondent Nos.1 to 4, who are the owner and insurer of the lorry and owner and insurer of the auto respectively.

Three identical issues were framed about the responsibility for the accident by the Tribunal. During enquiry, in the former O.P., the petitioner alone examined himself as PW.1 and marked Exs.A.1 to A.5, whereas, copy of the insurance policy was marked as Ex.B.1.

In the latter O.P., the petitioner – Smt M.Lakshmi examined herself as PW.1 and marked Exs.A.1 to A.7 and Ex.X.1 – case sheet along with X-rays summoned from GGH, Kakinada. A copy of the insurance policy was marked as Ex.B.1 on behalf of the fourth respondent.

The Tribunal, on appraisal of evidence on record, both, oral and documentary, let in by the respective parties, having found from the evidence, more particularly, from the contents of F.I.R., marked as Ex.A.1, and attested true copy of the charge sheet marked as Ex.A.5 in Crime No.76 of 2002, that, at the time of accident, nine persons were travelling in the auto as against four persons permitted, including driver, and even some persons were sitting near the driver of the auto and that by reason of overcrowding of passengers in the auto, there was every possibility of loosing control by the driver of the auto belonging to the third respondent who did not abide by the traffic rules and precautions to avert taking place of the accident and, thereby, basing on the maxim *'res ipsa loquitur',* and applying the same, held that the accident had occurred due to the rash and negligent driving of both the drivers of auto and lorry and, thus, apportioned the negligence to the extent of 50% each.

Concerning issue No.2 as to the determination of compensation, the Tribunal by taking into consideration the evidence of PW.1, and the documentary evidence, more particularly, the medical evidence which consists of Ex.A.3, bunch of three O.P. chits given by GGH, Kakinada, and Ex.A.2, attested photostat copy of the wound certificate issued by the Civil Assistant Surgeon, Community Health Centre, Kakinada, awarded distinct amounts under various heads and, thus, a total sum of Rs.21,700/- was granted with interest at 7.5% p.a. on the said amount.

In the latter O.P., on the same lines, the Tribunal granted Rs.92,200/- with interest at 7.5% basing on the nature of injuries sustained by the petitioner.

Aggrieved by the orders and decrees respectively fastening liability to the extent of 50% on the insurer of the auto, these two appeals have been preferred contending in the grounds of appeal that the Tribunal did not properly appreciate the issue of rash and negligent driving on the part of the driver of the auto and, somehow, failed to see that the accident had occurred only due to the fault of the driver of the lorry and, even the Tribunal did not direct the appellant to initially deposit the amount in proportion to the liability cast on it and that the Tribunal also overlooked the fact that there is no rebuttal evidence concerning the charge sheet averments, and that the maxim *'res ipsa loquitur',* cannot be applied where there is sufficient evidence and even the Tribunal failed to see that the appellant was added as a formal party without making any claim and, therefore, sought to set aside the orders and decrees so far as the appellant is concerned.

Heard Sri Kota Subba Rao, learned counsel for the appellant - New India Assurance Company Limited, insurer of the auto, and Sri G.Vishweshwar Reddy, learned counsel for the third respondent, M/s. National Insurance Company Limited, insurer of the lorry. No representation for the first respondent in these two appeals. A memo dated 18.01.2012 was filed by the appellant that the second respondent is not a necessary party in the former appeal. The fourth respondent though, served with notice, none appears in the former appeal. In the latter appeal, despite service of notice on respondent Nos. 2 and 4, none appears.

Perused the orders and evidence both, oral and documentary, let in, by the parties respectively.

So far as the contentions raised by the learned counsel for the appellant are concerned, it is no doubt true that the petitioners, in their claim petitions, in paragraph 26, mentioned that respondent Nos.3 and 4 are insured and insurer of the auto respectively and that they were added as parties as an abundant caution. However, it is also mentioned in the claim petition that if at all the Court comes to the conclusion that the accident has occurred merely due to the rash and negligent driving of the drivers of both the vehicles, award may be passed against all the respondents. Thus, it is for the Tribunal to decide as to the aspect of rash and negligent driving and certainly not for the petitioners, that too, when the owners of both the vehicles and respective insurers have been arrayed as parties without mentioning therein that such and such respondents are only proforma parties.

The fact that, as against the capacity of four persons, including driver, nine persons were travelling in the auto at the relevant time is not in dispute. In fact, that aspect of the case stands unrebutted since the appellant - Insurance Company has not taken pains to rebut the same by examining the driver of the auto, in which event, applying the maxim *res ipsa loquitur* by the Tribunal and apportioning the liability on the drivers of both the vehicles cannot be faulted with. That finding recorded by the Tribunal on issue No.1 since well-reasoned and well appreciated basing on the evidence on record certainly does not suffer from any legal infirmity. Therefore, there is no merit in the submission of the learned counsel for the appellant. It is no doubt true that the direction as to pay initially and recover 50% of the compensation liable to be paid by the fourth respondent as insurer to indemnify the third respondent is not made but, even that submission also would not sustain as much stress was not laid, though, agitated in the grounds of appeal. Thus, viewed from any angle, there is no merit in these appeals.

Therefore, these Appeals are dismissed maintaining the orders and decrees passed by the Tribunal in all respects. No order as to costs.

Miscellaneous petitions pending, if any, shall stand disposed of.

A.SHANKAR NARAYANA,J

Date: 17.03.2015
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