

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.908 of 2012

JUDGMENT:

1 This appeal, under Section 173 of the M.V. Act, is filed challenging the judgment and award dated 13.07.2010 passed in M.V.O.P.No.64 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Chittoor at Tirupati.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

3 The facts leading to filing of the present appeal, briefly, are as follows:

4 On 25.04.2003 at 7.30 p.m. the petitioner boarded the Jeep bearing No.AP-03-V-5058 at BN Kandriga village to go to Sullurpet. When the Jeep reached Gajulapelluru on Srikalahasti – Sullurpet main road, the driver of the Jeep drove the same in a rash and negligent manner and at high speed due to which he lost control over the Jeep and hit the right side wheel of the trailer attached to the tractor bearing No.TN 22 Z 4077 and thereafter the Jeep turned turtle. The accident occurred due to the rash and negligent driving of the driver of the Jeep against whom the Station House Officer Kandriga police station registered a case in Cr.No.24 of 2003 under sections 337, 338, 304-A and 279 IPC and Section 134 (A) (B) of the Motor Vehicles Act. In the said accident, the petitioner sustained injuries on various part of the body. The petitioner was initially shifted to Government hospital, Sullurpet and from there to Dr. Raghuramireddy hospital, Nellore and she spent huge amount for treatment. Due to the accident, the petitioner became permanently disabled and is unable to do her normal work. By the date of accident, the petitioner was aged about 40 years and used to earn Rs.2,000/- p.m. by doing milk business. The Jeep bearing No.AP-03-V-5058, which belongs to the first respondent, was insured with the second respondent as on the date of accident. Respondent Nos.3 and 4 are the owners of the tractor and trailer. Therefore, respondent Nos.1 to 4 are jointly and severally liable to pay compensation of Rs.1.00 lakh to the petitioner.

5 Respondent Nos.1, 3 and 4 remained *ex parte*. Second respondent filed

counter denying the material averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the driver of the tractor and trailer and that there was no negligence on the part of the driver of the Jeep. Respondent Nos.3 and 4 influenced the police and got foisted a false case against the driver of the Jeep. This respondent is not liable to pay compensation, if any, to the petitioner unless she proves that the driver of the Jeep was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

6 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the driver of the Jeep bearing No.AP 03 V 5058 & Tractor No. 22 Z 4077 drove the same in a rash and negligent manner and caused accident on 25.04.2003 and as a result the petitioner sustained injuries?
- ii. Whether the petitioner is entitled for compensation? If so, to what amount? By whom?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.4 were marked. On behalf of the second respondent R.W.1 was examined and Ex.B.1 was marked.

8 On appreciation of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the Jeep bearing No.AP-03-V-5058 and allowed the petition in part by awarding compensation of Rs.30,500/- and directed the respondent Nos.1 and 2 to pay the same with interest at 6% p.a from the date of filing of the petition till the date of deposit. Feeling aggrieved by the judgment and award passed by the Tribunal, the second respondent filed the present appeal.

9 Heard Sri G.Vishweshwar Reddy, the learned counsel for the second respondent. Though notices were served, there is no representation for the petitioner and the first respondent.

10 The contention of the learned counsel for the second respondent is two fold viz., 1) The Tribunal committed error while arriving at a conclusion that the

accident occurred due to the rash and negligent driving of the driver of the Jeep even though there is contributory negligence on the part of the driver of the tractor and trailer; and 2) The amount of compensation awarded by the Tribunal under different heads is on higher side.

11 Now the points that fall for determination in this appeal are:

1. Whether there was any contributory negligence on the part of the driver of the tractor and trailer? If so, to what extent?
2. Whether the compensation awarded by the Tribunal is on higher side?

Point No.1:

12 To prove the factum of death, the first petitioner examined herself as P.W.1 and got marked Exs.A.1 to A.4. To demolish the case of the petitioner, the second respondent got examined R.W.1. It is not in dispute that R.W.1 is not an eyewitness to the accident. Therefore, his testimony is not much helpful to prove the factum of accident.

13 As seen from the testimony of P.W.1, on the date of accident she was travelling in the Jeep. If the testimony of P.W.1 is taken into consideration, the accident occurred only due to the rash and negligent driving of the driver of the Jeep. Simply because P.W.1 is an injured witness, her testimony cannot be discarded on flimsy grounds. In the cross examination of P.W.1 nothing is elicited in support of the version put forth by the second respondent. The oral testimony of P.W.1 is supported by the recitals of Exs.A.1 and A.2. The oral testimony of P.W.1 coupled with Exs.A.1 and A.2 clearly reveals that the accident occurred due to rash and negligent driving of the driver of the Jeep. The oral testimony of P.W.1 is cogent and convincing more over supported by the recitals of Exs.A.1 and A.2. The Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the Jeep. The Tribunal has assigned cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the Tribunal in this case. In order to resolve the issue of composite negligence this Court is placing reliance on the following decisions:

14 1) ***T.O. Anthony Vs. Karvarnan & Others***, 2) ***Syed Ibrahim Vs. The Union of India (UOI) rep. by the Secretary to Central Government, Ministry of Defence***

and Another, 3) *Sombathina Ramu Vs. T. Srinivasulu and Another*, 4) *APSRTC & Another Vs. K. Hemalatha & Others* and 5) *Pawan Kumar Vs. M/s. Harkishan Dass Mohan Lal* wherein the Hon'ble apex Court held that in cases where composite negligence is pleaded, the suitor, having no role to play either directly or remotely and having not contributed any negligence to the causative factors of the injury, is, therefore, entitled to seek compensation from all of them or any one of them. It is a choice left to him. Correspondingly, it does not lie in the mouth of one of the wrong doers to insist upon the other or all the wrong doers also either to be impleaded or proportionately mulcted with the obligation to compensate the injured. The drivers / owners of both the vehicles are jointly and severally liable to pay compensation and it is open to the claimants to enforce the award against both or any of them. Suffice it to say that the victim of an action by joint tort-feasors can proceed against any or all of the joint tort feasons and if one of the joint tort feasons feels that he is not liable and the other joint tort feason should be made liable, his remedy is only to proceed against the other tort feason and seek reimbursement of the amount paid to the victim.

15 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the Jeep only. Therefore, the contention of the learned counsel for the second respondent that there was contributory negligence on the part of the driver of the Tractor and Trailer is not sustainable either on facts or on law.

POINT No.2:

16 A perusal of the record further reveals that the petitioner took treatment in SVRR Government hospital and in the hospital of Dr. Raghurami Reddy Orthopaedic hospital, Nellore. Due to fracture and injuries, the petitioner might have suffered a lot. Taking into consideration the nature of injuries and fracture sustained by the petitioner, the Tribunal rightly awarded an amount of Rs.15,000/- towards pain and suffering. For one reason or the other, the petitioner did not examine the doctor who issued the disability certificate. Taking into consideration all these aspects, the Tribunal awarded an amount of Rs.10,000/- towards deformity, discomfort and loss of future amenities. Taking into consideration the nature of treatment taken by the petitioner, the Tribunal

has rightly awarded an amount of Rs.5,000/- towards extra nourishment, medicines and attendant charges. The Tribunal also awarded an amount of Rs.500/- towards transportation charges.

17 Viewed from any angle, the amount of compensation awarded by the Tribunal under different heads cannot be said on higher side. Therefore, I am unable to accede to the contention of the learned counsel for the second respondent on this aspect.

18 There are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal. Further, it is not the case of the second respondent that the owner of the Jeep i.e. first respondent has violated the terms and conditions of the insurance policy. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioner.

19 For the foregoing discussion, the appeal lacks merits and bonafides and accordingly the same is dismissed. No order as to costs. Consequently, miscellaneous petition if any pending in this Criminal Petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 23rd April, 2015.

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