

The Hon'ble Sri Justice T. Sunil Chowdary
MACMA No.536 OF 2009

JUDGMENT:

1 Challenging the judgment and award dated 14.11.2008 passed in MVOP No.270 of 2007 on the file of Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Ongole, wherein and whereby the Tribunal, while awarding an amount of Rs.3,20,000/- to the claimants, fixed the liability in the ratio of 75 : 25, on respondent Nos.2 and 4, the 4th respondent - insurer of the bus has filed the present appeal.

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

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

4 On 30.04.2007 one Benguluri Kondamma (hereinafter referred to as 'the deceased) and some other villagers of Chekurapadu village boarded the bus bearing No.AP 9X 6159 belonging to the third respondent – Kalyani Travels at Ongole to go to Hyderabad. On 01.05.2007 at 4.00 a.m. when the bus reached Gundlaguda village of Nalgonda District, a lorry bearing No.ATT-6254 driven by its driver in a rash and negligent manner dashed against the bus in opposite direction. In connection with the said accident, the Station House Officer, Yacharam police station registered a case in Cr.No.30 of 2007 for the offence punishable under Sections 304-A and 337 IPC against the driver of the lorry. In the said accident the deceased sustained grievous injuries and died while undergoing treatment in Government Hospital, Ibrahimpatnam. By the date of accident, the deceased was aged 40 years and used to earn Rs.3,600/- p.m. First petitioner is husband and petitioner Nos.2 and 3 are children of the deceased. The petitioners are dependants on the income of the deceased. The lorry bearing No. ATT-6254 which belongs to the first respondent was

insured with the 2nd respondent insurance company and the bus bearing No. AP.9X-6159 which belongs to the third respondent was insured with the 4th respondent insurance company. Hence the petitioners filed claim petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.5.00 lakhs from all the respondents contending that all the respondents are jointly and severally liable to pay compensation to them.

5 The first and third respondents remained ex parte. Second respondent filed written statement denying all the averments made in the claim petition inter alia contending that the driver of the bus, without following the road rules, dashed against the lorry bearing No.ATT 6254. The driver of the bus alone was responsible for the accident. There was no negligence on the part of the driver of the lorry. The driver of the lorry was not having valid and effective driving licence as on the date of accident. Therefore, there is no obligation on the part of this respondent to indemnify the liability of the first respondent. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence the petition may be dismissed in so far as this respondent is concerned.

6 Fourth respondent filed counter admitting the manner of accident as pleaded by the petitioners, inter *alia*, contending that the accident occurred due to the rash and negligent driving of the driver of the lorry and there was no negligence on the part of the bus driver. After completion of investigation, the police filed charge sheet against the driver of the lorry in Cr.No.30 of 2007 under Sections 304-A, 337 and 338 IPC. The driver of the bus was not having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence the petition may be dismissed in so far as this respondent is concerned.

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

- i. Whether the accident took place due to rash and negligent driving of the lorry bearing No.ATT 6254 by its driver or the bus bearing No.AP 9 X 6159 by its driver or by both?
- ii. Whether the drivers of lorry and bus were having valid and effective driving licence by the time of the accident?
- iii. Whether the lorry bearing No.ATT 6254 was validly insured with R.2?
- iv. Whether the bus bearing No.Ap 9 X 6159 was validly insured with R.4?
- v. Whether the petitioners are entitled for compensation? If so, to what amount and from whom?
- vi. To what relief?

8 During the course of trial, on behalf of the petitioners P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the respondents R.Ws.1 and 2 were examined and Exs.B.1 to B.8 were marked.

9 On appreciation of the oral and 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 drivers of lorry and bus in the ratio of 75% : 25% and allowed the petition by awarding compensation of Rs.3,20,000/- to the petitioners. Feeling aggrieved by the judgment and award of the tribunal, fixing 25% liability on it, the 4th respondent preferred this appeal.

10 Heard Sri Kota Subbarao, the learned standing counsel for the 4th respondent, Sri Valluri Mohan Srinivas learned counsel for the 2nd respondent and Sri Madhava Reddy, the learned counsel for the petitioners/claimants.

11 Sri Kota Subbarao the learned counsel for the 4th respondent submitted that the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the drivers of the lorry and the

bus respectively in the ratio of 75% : 25% is not sustainable either on facts or on law.

12 *Per contra*, Sri Mohan Srinivas contended that the Tribunal appreciated the oral and documentary evidence in right perspective and arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the drivers of both the vehicles in the ratio of 75% : 25% and the said finding needs no interference from this Court. The learned counsel has fairly conceded that he is not disputing the quantum of compensation awarded by the Tribunal.

13 The petitioners have not filed any appeal challenging the quantum of compensation awarded by the Tribunal. Hence, I am not inclined to consider the legality of quantum of compensation awarded by the Tribunal. Therefore, the only point that arises for consideration in this appeal is

“Whether the finding of the Tribunal that the driver of the bus bearing No.AP 9 X 6159 belonging to the third respondent also contributed to cause the accident to the extent of 25% is sustainable or not?”

14 In order to prove the manner of accident and factum of death of the deceased, the first petitioner herself examined as P.W.1 and got marked Exs.A.1 to A.4. P.W.2 is the eyewitness to the accident. As per the testimony of P.W.1, on the date of accident himself and his wife were proceeding to Hyderabad from Ongole in the bus bearing No.AP 9 X 6159. When the bus reached Gundlaguda village, the driver of the lorry bearing No.ATT 6254 drove the same in a rash and negligent manner and dashed against the bus in opposite direction. Admittedly, P.W.1 was an eyewitness to the accident. As per the testimony of R.Ws.1 and 2, the accident occurred due to the negligence of the driver of the bus only. It is not in dispute that R.Ws.1 and 2 were also not eyewitnesses to the accident. Therefore, their evidence is no way helpful to prove the manner of accident.

15 As seen from the testimony of P.W.2, on the date of accident

herself and her family members were proceeding to Hyderabad from Ongole in a bus bearing No.AP 9 X 6159 belonging to Kalyani travels and when the bus reached Gundlaguda, a lorry bearing No.ATT 6254, driven by its driver in a rash and negligent manner, had hit the bus in opposite direction. If the testimony of P.Ws.1 & 2 is taken into consideration, the accident occurred due to the rash and negligent driving of the driver of the lorry only. The oral testimony of P.Wa.1 and 2 is supported by the recitals of Ex.A.1-FIR and A.3-Charge sheet. No suggestion was put to this witness that there was no negligence on the part of the driver of the lorry to cause the accident. P.W.2 denied the suggestion that the accident occurred due to the overloading of the bus. As per the testimony of P.W.2, the lorry turned turtle after hitting the bus. This itself indicates the manner in which the driver of the lorry had driven the same at the time of accident. By examining P.Ws.1 and 2 and marking Exs.A.1 to A.3, the petitioners established that the accident occurred only due to the rash and negligent driving of the driver of the lorry, which resulted in the death of the deceased. The 2nd respondent did not choose to examine the driver of the lorry or any other eyewitness to the accident to establish the negligence, if any, on the part of the driver of the bus.

16 A perusal of the record further reveals that after completion of investigation, the police filed charge sheet against the driver of the lorry for the offences punishable under Sections 304-A, 338 and 337 of IPC. If the driver of the crime vehicle abstains himself from entering into the witness box, the Tribunal can draw an adverse inference. There is no doubt that in case of head on collision, the Tribunal is entitled to apportion the negligence on the part of the drivers of both the vehicles basing on the material available on record if the claim petition is filed by one of the drivers or his legal representatives. In the instant case, there is no evidence much less legally admissible evidence to establish the negligence on the part of the driver of the

bus. It is needless to say that the Tribunal or the Court can draw an inference basing on the material available on record. The Tribunal drew the presumption that the driver of the bus was also responsible to cause the accident to an extent of 25%. The finding of the Tribunal is not supported by any material. On the other hand, across the bar, the learned counsel appearing for all the parties submitted that in a connected O.P.No.221 of 2007, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the lorry only. The Tribunal cannot presume the things in the absence of any oral and documentary evidence. The second respondent did not file even the rough sketch of the scene of offence at least to enable the Tribunal to draw such a presumption. In the light of the foregoing discussion, I am of the considered view that the finding of the Tribunal that the driver of the bus bearing No.AP 9 X 6159 also contributed to the extent of 25% negligence to cause the accident is not sustainable.

Hence the finding of the Tribunal to the extent of fastening 25% negligence on the part of the driver of the bus bearing No.AP 9 X 6159 is hereby set aside. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ATT 6254 belonging to the first respondent, which resulted in the death of the deceased. The point is answered accordingly.

17 In view of the finding of this Court on the above point, the first respondent being the owner of the lorry bearing No.ATT 6254 is vicariously liable for the wrongful acts committed by his driver. The lorry bearing No.ATT 6254, which belongs to the first respondent was validly insured with the second respondent as on the date of accident.

Therefore, the second respondent has to indemnify the liability of the first respondent. Hence the respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioners. The finding of the Tribunal that the respondent Nos.3 and 4 are also jointly and severally liable to pay compensation amount of Rs.80,000/- to the

petitioners is hereby set aside.

18 In the result, the appeal is allowed holding that the respondent Nos.3 and 4 in the O.P. are not liable to pay compensation to the petitioners. Consequently respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners. No order as to costs. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

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T.SUNIL CHOWDARY, J.

Date: 4th February, 2015.

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