

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.3135 of 2009

JUDGMENT:

1 This appeal, under Section 173 of the M.V. Act, is filed challenging the judgment and award dated 11.01.2007 passed in M.V.O.P.No.502 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Chittor 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. one P. Ramachandran boarded the Jeep bearing No.AP-03-V-5058 at BN Kandriga village to go to Sullurupet. 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 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, Ramachandran (hereinafter referred to as 'the deceased') sustained injuries on various part of the body and died on the spot. By the date of accident, the deceased was aged about 50 years and was earning Rs.15,066/- p.m. by working as Junior Lecturer in SVA Junior College, Srikalahasthi. First petitioner is wife, petitioner Nos.2 and 3 are daughters and petitioner Nos.4 and 5 are parents of the deceased and they are all dependents on the income of the deceased. 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, the respondent Nos.1 to 4 are jointly and severally liable to pay compensation of Rs.20.00 lakhs to the petitioners.

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 petitioners unless they prove 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 petitioners 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 deceased P.Ramachandran husband of petitioner No.1 father of petitioners.2 & 3 and son of 4th and 5th petitioners died in the motor vehicle accident that took place due to rash and negligent driving of the driver of Jeep bearing No.AP 03 V 5058 on 25.04.2003 by hitting the trailer attached to tractor bearing No.TN 22 Z 4077?
- ii. Whether the petitioners are entitled for compensation? If so, to what amount?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioners P.Ws.1 to 3 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondents R.Ws.1 and 2 were 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 which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.12,41,956/- and directed the second respondent to pay the same with interest at 7.5% 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 and Sri J. Ugra Narasimha, the learned counsel for the petitioners.

10 The contention of the learned counsel for the second respondent is three

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, 2) The Tribunal applied wrong multiplier even though the petitioner was aged about 57 years by the date of accident, and 3) The amount of compensation awarded by the Tribunal under different heads is on higher side.

11 *Per contra*, the learned counsel for the petitioners submitted that the Tribunal, basing on the oral and documentary evidence available on record, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the Jeep. He further submitted that the Tribunal awarded just and reasonable compensation by applying correct multiplier.

12 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:

13 To prove the factum of death, the first petitioner examined herself as P.W.1 and got marked Exs.A.1 to A.4. P.W.2 is the eyewitness to the accident. To demolish the case of the petitioners, the second respondent got examined R.Ws.1 and 2. It is not in dispute that P.W.1 and R.W.2 are not eyewitnesses to the accident. Therefore, their testimony is not much helpful to prove the factum of accident.

14 As seen from the testimony of P.W.2, on the date of accident she was also travelling in the Jeep along with the deceased. If the testimony of P.W.2 is taken into consideration, the accident occurred only due to the rash and negligent driving of the driver of the Jeep.

15 As per the testimony of R.W.1 (the driver of the Jeep) the rear portion of the trailer touched his Jeep. There is no whisper in the testimony of R.W.1 that the driver of the tractor and trailer had driven the same in a rash and negligent manner and hit the Jeep. In the cross-examination, R.W.1 in unequivocal terms

deposed that he did not observe the trailer behind the tractor and his Jeep dashed against the trailer and the right side wheel hub of the trailer got damaged. If the testimony of R.W.1 is taken into consideration, the Jeep itself hit the rear portion of the trailer. Even according to R.W.1 there is no rashness or negligence on the part of the driver of the tractor and trailer. In the chief examination itself R.W.1 admitted that police investigated into the matter and filed charge sheet against him. In order to get acquittal in the criminal case registered against him, the possibility of distortion of facts by R.W.1 cannot be ruled out completely.

16 P.W.2 is an independent witness, whose testimony cannot be discarded on flimsy grounds. In the cross examination of P.W.2 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.3 and A.4 clearly reveals that the deceased died due to the injuries sustained in the accident. The oral testimony of P.Ws.1 and 2 is cogent and convincing more over supported by the recitals of Exs.A.1 and A.2. At this juncture, the learned counsel for the second respondent has drawn my attention to the judgment passed in MACMA No.3181 of 2005, which also arose out of the very same accident. In that particular case, the Tribunal itself apportioned the negligence on the part of the driver of the Jeep and the driver of the tractor and trailer in the ratio of 70% : 30% and the same was confirmed by this Court in MACMA No.3181 of 2005. In the instant case, 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. Therefore, the judgment cited by the learned counsel for the second respondent has no relevancy so far as this case is concerned. In order to resolve the issue, this Court is placing reliance on the following decisions:

17 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.

18 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:

19 It is not in dispute that by the time of accident, the deceased was working as Junior Lecturer, History Department in SVA Junior College, Srikalahasthi. The oral testimony of P.W.3 coupled with Exs.A.5 and A.7 clearly reveals the said fact. In the claim petition the age of the deceased was mentioned as 50 years. Basing on the post-mortem report, the Tribunal arrived at a conclusion that the deceased may be aged about 52 to 55 years and applied multiplier 11. Even as per the ratio laid down in ***Sarla Verma Vs. Delhi Transport Corporation***, the appropriate multiplier for the age group of 51 to 55 is 11. At this juncture, the learned counsel for the petitioner produced copy of the service register wherein the date of birth of the deceased was shown as 12.03.1952. The same was also verified by the learned counsel for the second respondent. This Court is very

much aware that a document which is not marked in the lower court cannot be looked into. For one reason or the other, the petitioners have not produced the service register of the deceased before the Tribunal. Hence this Court is of the considered view that the Tribunal has rightly applied the multiplier 11. Therefore, I am unable to accede to the contention of the learned counsel for the second respondent that the Tribunal has applied wrong multiplier.

20 The oral testimony of PW.3 coupled with Ex.A.7 reveals that by the time of accident, the deceased was drawing gross salary of Rs.15,066/-. After excluding the statutory deductions, the Tribunal assessed the income of the deceased as Rs.14,000/- and deducted $1/3^{\text{rd}}$ towards his personal expenses. The monthly contribution of the deceased comes to Rs.9,033/-. Thus the loss of dependency would come to $\text{Rs.}9,033 \times 12 \times 11 = \text{Rs.}12,31,956/-$. The Tribunal also awarded an amount of Rs.10,000/- towards loss of consortium. In total, the Tribunal awarded an amount of Rs.12,41,956/- as compensation to the petitioners. The petitioners have not filed any appeal or cross-objections challenging the quantum of compensation awarded by the Tribunal. Basing on the material available on record, I am of the considered view that the Tribunal has awarded just and reasonable compensation only. Therefore, the contention of the learned counsel for the second respondent that the compensation awarded by the Tribunal is on higher side is not sustainable.

21 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 petitioners.

22 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.

kvsn