THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.3258 of 2009

JUDGMENT:

Aggrieved by the Award dated 11.02.2009 in O.P.No.833 of 2006 passed by the Chairman, MACT-cum-I Additional District Judge, Nalgonda (for short "the Tribunal"), the 2nd respondent in the O.P/ United India Insurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a. The case of the claimants is that on 23.07.2006 at about 10.00 AM, when the deceased—Mohamood Ali was proceeding in a lorry bearing No.ABB 1442 from Bommala Ramaram to Hyderabad along with his goods and when the lorry reached I-Comm factory in the limits of Keesara, Ranga Reddy District, another lorry bearing No.ABP 7722 being driven by its driver in a rash and negligent manner and at high speed came in the opposite direction and dashed the lorry No.ABB 1442 in which the deceased was travelling, due to which he sustained grievous injuries and died on the spot. It is averred that the accident was occurred due to the fault of driver of lorry No.ABP 7722. On this plea, the claimants filed O.P.No.506 of 2005 under Section 166 of Motor Vehicles Act, 1988 (for short "M.V.Act") and claimed Rs.15,00,000/- as compensation against respondents 1 and 2 who are owner and insurer of lorry No.ABP 7722.

b. R1 filed his counter and contended that there is no negligence on the part of driver of lorry No.ABP 7722 and the driver of lorry No.ABB 1442 was at fault. He also contended that claim petition is bad for non-joinder of necessary parties i.e. owner and driver of lorry No.ABB 1442 in which the deceased travelled. He further contended that as the lorry bearing No.ABP 7722 was insured with 2nd respondent and he is not liable to pay the compensation.

c. Respondent No.2/Insurance Company filed counter denying all the material averments made in the petition and contended that there is no negligence on the part of driver of lorry No.ABP 7722 and the accident took place due to gross negligence on the part of driver of lorry No.ABB 1442 only. R2 contended that driver of lorry No.ABP 772 had no valid and effective licence at the time of accident. R2 further contended that compensation claimed is highly excessive and exorbitant and thus prayed to dismiss the O.P.

d. During trial, PWs.1 to 3 were examined and Exs.A1 to A6 were marked RW1 was examined and Exs.B1 to B4 were marked on behalf of respondents.

e. The Tribunal considering the oral and documentary evidence held that driver of the lorry No.ABP 7722 was responsible for the accident and awarded Rs.3,86,760/- with proportionate costs and interest at 7.5% p.a. under different heads as follows:

Loss of earnings Rs. 3,53,760-00

Loss of consortium Rs. 15,000-00

Loss of estate Rs. 15,000-00

Funeral and transport expenses Rs. 3,000-00

Total: Rs. 3,86,760-00

Hence, the appeal by Insurance Company.

3) The parties in this appeal are referred as they were arrayed before the lower Tribunal.

4) Heard arguments of Sri V.Srinivasa Rao, learned counsel for appellant/Insurance Company, Sri Chandrasekhar Reddy Gopireddy for respondents 1 to 6/claimants. Notice sent to R7 was unserved.

5) Learned counsel for appellant/Insurance Company opposed the award on the main contention that lorry bearing ABP 7722 was not at all involved in the accident but some other vehicle i.e. tipper bearing No.AP 31 J 6611 dashed the lorry bearing ABB 1442 in which the deceased was travelling but however, since the deceased was an Assistant Sub-Inspector of Police, claimants and police some how got managed the record and planted the lorry bearing ABP 7722 as if the said vehicle dashed the lorry No.ABB 1442 and filed the claim petition. Referring to Ex.B4—rough sketch drawn by Investigating Officer, learned counsel pointed out that in between lorry bearing No.ABB 1442 and lorry bearing No.ABP No.7722, a tipper bearing No.AP 31 J 6611 is shown which demonstratively proves that lorry No.ABP 7722 in fact did not dash the lorry No.ABB 1442 and therefore, respondents 1 and 2 in the OP who are owner and insurer of ABP 7722 are not liable to answer the claim. He further submitted it is not the case of the claimants that lorry bearing No.ABP 7722 hit the tipper AP 31 J 6611 and in that process the back portion of the tipper hit the lorry No.ABB 1442 coming behind the tipper. In such an event, the responsibility would have been remotely fixed on the lorry No.ABP 7722. However, that is not case of the claimants and they falsely claimed as if lorry No.ABP 7722 directly hit the lorry No.ABB 1442 which is impossible from the facts depicted in Ex.B4. He argued that probably the tipper No.AP 3J 6611 might not be having insurance coverage and that is why the claimants might have filed the claim against the lorry No.ABP 7722. He thus prayed at the first instance to exonerate the Insurance Company from the liability and

alternatively to remand the matter to the lower Tribunal to afford an opportunity to the Insurance Company to examine the Investigating Officer to prove that lorry No.ABP 7722 was not involved in the accident.

6) Per contra, while opposing the appeal, learned counsel for respondents/claimants argued that lorry No.ABP 7722 was very much involved in the accident as it dashed lorry No.ABB 1442 and tipper No.AP 31J 6611 was in fact on the backside of the ill-fated lorry No.ABB 1442 which is evident from Ex.B3—scene of offence panchanama. He submitted the sketch in Ex.B4 was not drawn in tune with Ex.B3 and hence the lower Tribunal rightly came to the conclusion that lorry ABP 7722 was involved in the accident and its driver went on wrong side and dashed the opposite coming lorry No.ABB 1442. He thus argued that there is no need to remand the matter and prayed to dismiss the appeal.

7) In the light of above rival arguments, the points for determination in this appeal are:

> *1. Whether the lorry bearing No.ABP 7722 was involved in the accident and if so, whether its driver was responsible for the accident?*
>
> *2. To what relief?*

8) **POINT No.1**: On a careful scrutiny of the evidence on record, I am unable to accept the contention of appellant/Insurance Company. It is true that in Ex.B4—rough sketch of scene of offence, it is mentioned as if the tipper bearing No.AP 31 J 6611 intruded between the two lorries bearing Nos.ABB 1442 and ABP 7722 and Ex.B4 gives an impression as if lorry No.ABP 7722 and tipper bearing No.AP 31 J 6611 had collided with each other and lorry No.ABB 1442 was apparently not concerned in the said collision. Ex.B4 gives a further impression that at best the back portion of tipper might have dashed the back coming lorry No.ABB 1442. In simple, Ex.B4 rules out the possibility of crime lorry No.ABP 7722 having a direct collision with victim's lorry No.ABB 1442. This is the impression one apparently

gets from Ex.B4. However, a close perusal of Ex.B3—scene of offence panchanama would show that the description about the placement of vehicles in Ex.B4 is not correct. As per Ex.B3, victim's lorry No.ABB 1442 was standing towards eastern side of the road facing towards south and its front cabin was damaged and it was carrying brick load. In Ex.B3 it is further mentioned that the crime lorry No.ABP 7722 was facing towards north and it was almost on the eastern edge of the road and its front portion was damaged. Then, most importantly it is mentioned that the controversial tipper bearing No.AP 31 J 6611 was standing towards eastern side of the road on the back side of victim's lorry No.ABB 1442. In Ex.B3 it was not at all mentioned that tipper was intercepting in between the two lorries as sketched in Ex.B4. Exs.B3 and B4 were prepared in the presence of panchas and they signed on them. These documents were prepared within short time after the accident. It appears that in Ex.B4 the placing of vehicles was wrongly mentioned. In stead of showing the tipper on the backside of the lorry No.ABB 1442 it was shown in between the two lorries. I prefer to believe Ex.B3 than Ex.B4 for the reason that in Ex.A1—FIR which was registered within short time after the accident it was clearly mentioned by one of the victims in the lorry bearing No.ABB 1442 to the effect that when their lorry passed I-Comm factory and reached a road curve, crime lorry No.ABP 7722 came in the opposite direction and dashed their vehicle. If really the tipper bearing No.AP 31 J 6611 was involved in the accident, he would not have failed to mention the said fact. That apart, PW3—Security Guard in I-Comm factory who witnessed the accident, deposed that lorry No.ABP 7722 came from opposite side and dashed the lorry No.ABB 1442. He did not say anything about tipper No.AP 31 J 6611. Police too after due investigation found that lorry No.ABP 7722 dashed the lorry No.ABB 1442. So, in view of the overwhelming evidence cogently showing that lorry No.ABP 7722 dashed the victim's lorry No.ABB 1442, I cannot accept the contention of the appellant that lorry No.ABP 7722 was not involved in the accident. This point is answered accordingly.

9) In the result, this MACMA filed by the Insurance Company is dismissed by confirming the award passed by the Tribunal in O.P No.833 of 2006. No costs in the appeal.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Dt: 19.11.2015

Murthy