

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.995 of 2009

JUDGMENT:

Aggrieved by the award dated 18.09.2007 in M.O.P.No.873 of 2003 passed by the Chairman, MACT-cum-VIII Additional District Judge, Guntur (for short “the Tribunal”), the owner preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant is that on 26.01.2002 at about 9 AM when he was proceeding on his cycle from Rajuvaram to Pamarru side, a Tata Safari bearing No.AP 09 AA 9549 came in the opposite direction being driven by its driver at high speed and in a rash and negligent manner and dashed the claimant's cycle. Thereby, the claimant received severe head injury besides fracture of both bones of left leg below the knee. It is averred that the accident was occurred due to the fault of driver of the offending Tata Safari. On these pleas, the claimant filed M.O.P.No.873 of 2003 under Sections 163A and 166 of Motor Vehicles Act, 1988 (for short “MV Act”) against respondent—the owner of the offending Tata Safari and claimed Rs.2,50,000/- as compensation.

a. Respondent filed counter contending that there was no negligence on the part of driver of the vehicle and accident was occurred due to the fault of claimant himself, as he suddenly tried to cross the road and hit the vehicle. He also contended that claim is highly excessive and exorbitant.

b. During trial, PW1 was examined and Exs.A1 to A10 were marked on behalf of claimant. RW1 was examined and Ex.B1—charge sheet in CC.No.129 of 2992 on the file of JFCM, Mangalagiri was marked on behalf of respondent.

c. The Tribunal on appreciation of both oral and documentary

evidence fastened 50% of negligence on the part of driver of the vehicle and accordingly awarded compensation of Rs.53,572/-.

Hence, the appeal by owner.

3) The parties in this appeal are referred as they stood before the Tribunal.

4) Heard arguments of Sri Meka Rajasekhara Reddy, learned counsel for appellant/owner and Sri T.Sri Charan, learned counsel for respondent/claimant.

5a) Criticizing the award whereunder the appellant was fastened with liability, learned counsel for appellant/owner would argue that in the resultant accident there is no fault of driver of Tata Safari and in fact the claimant who was coming in the opposite direction on the road running East to West direction, suddenly swerved to the North which was his wrong side and in that process he dashed to the opposite coming Tata Safari and thus in the entire episode the claimant alone was at fault but not the driver who was driving at that crucial time at a minimum speed of 30 to 40 KM per hour.

b) While agreeing police filing charge sheet against the driver of Tata Safari and his admission of guilt before concerned Magistrate, learned counsel, however, argued that he admitted guilt not because he was at fault in the accident, but in order to extrude himself from moving round the Court for long, as he belonged to a different place. Therefore, from the admission of his guilt, he contended, it cannot be inferred that he contributed to the accident. He relied upon the following decision on the aspect of contributory negligence.

Velaishwamy Nagammal and others v. V.A.Sethu Manickan and another

6) Per contra, while supporting the award, learned counsel for respondent/claimant argued that the Tribunal having regard to the evidence on record has correctly held that both the claimant and

driver of appellant were equally at fault and awarded 50% of the compensation to the claimant and there is no need to revise the finding of the Tribunal. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination is:

“Whether the award passed by the Tribunal fixing fault in the accident equally on the claimant and driver of the respondent is correct?”

8 a) **POINT:** Admittedly, the accident was occurred on 26.01.2002 at about 9 AM on the road leading Pamarru to Rajuvaram. The road runs in East West direction. According to PW1, he was proceeding from Rajuvaram to Pamarru side and Tata Safari was coming in the opposite direction and the native place of claimant Kancherlavaripalem is situated on the Northern side. According to PW1, when he was proceeding on the left side of the road, the driver of Tata Safari came on the wrong side, hit the cycle and caused the accident. On the other hand, version of PW1—driver of Tata Safari is that he was driving the vehicle at low speed i.e. 30 to 40 KM per hour and while so, claimant who was coming on his cycle in the opposite direction suddenly took turn to his right side and came across the vehicle without giving signals and seeing him he applied sudden breaks but the cycle came and hit his vehicle. His contention is that claimant himself was at fault in the accident. Neither party produced any independent evidence to buttress their claim. The record shows the police have laid charge sheet against RW1 and he admitted guilt before the concerned Magistrate.

b) Be that it may, the Tribunal without taking into consideration the admission of guilt by RW1 appraised the evidence placed before it and observed that neither party produced independent evidence and PW1 was proceeding on the wrong side to reach his village but RW1 was not driving his vehicle in moderate speed which is evident from the fact that on hitting his vehicle PW1 suffered fracture injuries and accordingly came to the conclusion that both PW1 and RW1 are equally responsible for the accident and awarded 50% of compensation to the claimant.

9) On perusal of the evidence, I find no perversity in the finding of the Tribunal. Each of the drivers stick up to their version and they did not produce any independent witnesses. In these circumstances, in my view, the Tribunal rightly held both PW1 and RW1 are equally responsible for the accident. As such, I find no merits in the appeal and accordingly this MACMA is dismissed by confirming the award passed by the Tribunal. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 09.06.2015

Note: L.R Copy to be marked: Yes/ No

Murthy