

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.1177 of 2009

JUDGMENT:

Challenging the compensation awarded in O.P.No.230 of 2006 dated 19.01.2007 by the Chairman, M.A.C.T-cum-III Additional District Judge, Karimnagar (for short “the Tribunal”), the second respondent—Oriental Insurance Company Limited, Karimnagar preferred the instant appeal.

2) The factual matrix of the case is thus:

a) Claimant No.1 is the widow, Claimant Nos.2 and 3 are the parents of the deceased—Salpala Ramachandram. The case of the claimants is that on 20.03.2005 at about 1 PM, when the deceased along with two others was returning from Kothapalli to Kolanur on their Hero Honda motorcycle bearing No.AP 1 E 6258 and when they reached the outskirts of Kolanur village, suddenly a van bearing No.AP 15T 3967 being driven by its driver in a rash and negligent manner came in the opposite direction and dashed the motorcycle, due to which the deceased fell down on the road and received fatal injuries and while shifting to hospital he succumbed to injuries. It is averred that van driver was responsible for the accident. On these averments the claimants filed O.P.No.230 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short “M.V Act”) against respondents 1 and 2, who are the owner and insurer of the van and claimed Rs.5,00,000/- as compensation under different heads mentioned in OP.

b) Respondent No.1—owner-cum-driver of the van filed counter contending that there is no fault or negligence on the part of driver of van. He further contended that as the offending van was insured with R2

—Insurance Company, it has to indemnify the liability of R1, if any.

c) Respondent No.2—Insurance Company filed counter and opposed the petition contending that accident was occurred due to the rash and negligence of deceased himself and he has no valid driving licence at the time of accident. R2 further contended that compensation claimed is excessive and exorbitant and prayed for dismissal.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A5 were marked on behalf of claimants. No oral or documentary evidence was adduced on behalf of respondents.

e) On appreciation of both oral and documentary evidence the Tribunal awarded total compensation of Rs.3,74,000/- with costs and interest at 7.5% p.a. against respondents 1 and 2 under the following heads:

Loss of estate		Rs. 3,60,000-00
Loss of consortium	Rs.	10,000-00
Transportation	Rs.	2,000-00
Funeral expenses	Rs.	2,000-00

Total	Rs.	3,74,000-00

Hence, the appeal by Insurance Company.

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

4) Heard arguments of Smt. I.Mammu Vani, learned counsel for appellant/ Insurance Company; Sri P.Raja Sripathi Rao, learned counsel

for respondent Nos.1 to 3/claimants and Sri M.Arvind, learned counsel for R4/owner.

5 a) Fulminating the award, learned counsel for appellant/Insurance Company mainly argued that the accident was occurred purely due to the rash and negligent driving of the motorcycle by the deceased himself, as he overloaded his motorcycle with two pillion riders and drove the vehicle at high speed and rash and negligent manner and thereby lost control and dashed the opposite coming van and the Tribunal without considering this fact has erroneously held as if R1 who is the driver-cum-owner of the van was responsible for the accident. Learned counsel thus argued that Tribunal ought to have fixed the liability on the deceased himself. Alternatively, she argued that at any rate, since two vehicles were involved in the accident, liability needs to be apportioned between them since the fault also lies with the deceased as he drove the motorcycle by overloading two pillion riders. Secondly, learned counsel argued that compensation is excessive and thus prayed to allow the appeal.

6) Per contra, learned counsel for respondents/claimants argued that there was absolutely no fault on the part of deceased and fault lies with the driver of the van which is manifest from the evidence of PW2, who is an eyewitness-cum- complainant and Tribunal rightly fastened liability on the van driver and there is no need to interfere with the finding of the Tribunal. He thus prayed to dismiss the appeal.

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

“Whether the award passed by the Tribunal is factually and legally sustainable?”

8) **POINT:** Accident, involvement of motorcycle bearing No. No.AP 1E

6258 and van bearing No.AP 15T 3967 and death of rider and two pillion riders of the motorcycle are admitted facts. The main contention of learned counsel for appellant is that deceased himself was at fault since he overloaded the vehicle with two pillion riders and thereby lost control and dashed the van whereas the contention of claimants is that van driver was at fault.

a) Be that it may, the claimants to prove the fault of van driver examined PW2 who is an eyewitness-cum-complainant. He deposed that he was a shepherd and on the date of accident i.e. on 20.03.2005 he was grazing the sheep by the side of the road leading Palamaneru to Kothapally. He stated that at about 1 PM the accident was occurred and at that time the offending van was coming from Palamaneru to Kothapally, whereas the deceased and two others were proceeding on the motorcycle in the opposite direction and the van went at high speed and dashed the two wheeler and thereby Seenu and Sadaiah—two pillion riders died on the spot and deceased—Ramachandram who fell down from the motorcycle suffered injuries and this witness sent message to the parents of Ramachandram, then they came and tried to shift him in auto to hospital but he succumbed to injuries. This witness stated that accident was occurred due to the rash and negligent driving by the van driver. He lodged complaint to the police about the accident. In the cross-examination he stated that he witnessed the accident at a distance of two to four yards. He denied the suggestion that accident was occurred due to rash and negligence on the part of deceased as he overloaded the motorcycle. So, a careful perusal of evidence of PW2 would show that he was an eyewitness to the accident. He reported about the accident to police within short time after accident and his evidence thus attains great importance. He clearly deposed that accident was occurred due to rash and negligent driving of the van driver. Though he was extensively cross-examined, no useful material was elicited to

hold otherwise. Merely because he is a co-villager of deceased his evidence cannot be brushed aside as he was an eyewitness and lodged complaint to the police. The 1st respondent in OP was the driver of the van. Though he filed his written statement denying his fault, but he did not examine himself to establish his stand. The appellant/Insurance Company also did not adduce any evidence to prove its contention that fault was with the deceased. Therefore, it cannot contend contributory negligence of the deceased. It should be noted that by mere overloading the vehicle involved in accident, one cannot come to an automatic conclusion that the accident was occurred due to such overloading unless there is a clear cut evidence to the effect that due to overloading concerned driver was unable to control the vehicle and went on wrong side and dashed the other vehicle. This High Court in an unreported judgment in ***M. Madhavi and others v. Ch. Ananthaiah and others***^[1] has clearly delineated this aspect and held as follows:

“11) When all the above decisions rendered on the point of contributory negligence are analysed, we can understand that mere breach of legal duty or violation of provision of a statute per se cannot be termed as contributory negligence. In order to prove the contributory negligence, it must be established that the aforesaid breach of legal duty or violation of provision of a statute has contributed for the damage.”

So, in view of the aforesaid precedential jurisprudence the contention of appellant/ Insurance Company cannot be accepted. The Tribunal after elaborate discussion has rightly held that van driver was responsible for the accident. I see no ground to differ with the said finding.

b) Then, the contention of appellant/Insurance Company regarding

excessiveness of compensation is concerned, on a perusal of the award I see no such excessiveness or arbitrariness in the quantum of compensation. Hence, there is no reason to interfere with the award.

9) In the result, I find no merits in the appeal and it is accordingly dismissed by confirming the award passed by the Tribunal in O.P.No.230 of 2006. No costs in the appeal.

U.DURGA PRASAD RAO, J

Date: 26.06.2015

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

Murthy

^[1] MACMA No.229 of 2009 dated 25.03.2014