

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

MACMA No.929 of 2009

&

MACMA No.744 of 2010

COMMON JUDGMENT:

1 Aggrieved by the judgment and award dated 29.10.2008 passed in MVOP No.99 of 2004 on the file of Chairman, Motor Accidents Claims Tribunal-cum-I Additional Chief Judge, Secunderabad, wherein and whereby an amount of Rs.7,00,480/- was awarded as compensation to the petitioners by fastening the liability in the ratio of 50 : 50 on the respondent Nos.2 and 3, the second respondent filed MACMA No.929 of 2009 and the third respondent filed MACMA No.744 of 2010.

2 Since these two appeals arise out of the very same judgment and award passed in the above said O.P, they are being disposed of by this common judgment.

3 For the sake of convenience, the parties to this appeal are hereinafter referred to as they were arrayed in the O.P.

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

5 On 16.03.2004 one Chandrakala (hereinafter referred to as 'the deceased') was proceeding towards her school at Karshalagadda Thanda from ECIL cross roads in a seven seater auto bearing No.AP 24 V 1256. When the auto reached near Vardhana school, Kothapeta cross roads, the driver of the auto, while changing cassette in the tape recorder, dashed against an RTC bus bearing No.AEZ 3899, which was coming in opposite direction. In connection with the said accident, the Station House Officer, Keesara police station registered a case in

Cr.No.58 of 2004 under Section 304-A of IPC against the driver of the auto. Due to the accident the deceased sustained multiple injuries all over the body and died in Apollo hospital, Hyderabad on 17.3.2004 while undergoing treatment. By the date of accident, the deceased was aged about 29 years and was drawing salary of Rs.5,275/- p.m. as SGT teacher. The petitioners are dependents on the income of the deceased. Therefore, the petitioners filed the petition seeking compensation of Rs.10,00,000/- for the death of the deceased in the accident. The auto bearing No.AP 24 V 1256 which belongs to the first respondent was insured with the second respondent as on the date of accident and that the third respondent is the owner of the bus bearing No.AEZ 3899. Therefore, the respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the petitioners.

6 First respondent remained ex parte. Second respondent-insurer of the auto filed counter denying the averments made in the petition, inter *alia* contending that the accident occurred due to the rash and negligent driving on the part of the driver of the RTC bus bearing No.AEZ 3899 and hence this respondent is not liable to pay compensation to the petitioners. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence the petition may be dismissed so far as this respondent is concerned.

7 Third respondent – insurer filed written statement denying all the material averments made in the petition, inter *alia* contending that there was no rashness or negligence on the part of the driver of the bus. Since the bus bearing No.AEZ 3899 was not involved in the accident, this respondent is not liable to pay compensation, if any, to the petitioners. The accident occurred

due to the rash and negligent driving of the auto by its driver. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence the petition against this respondent is liable to be dismissed.

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

- i. Whether the accident occurred owing to the rash and negligent driving of the driver of RTC Bus bearing No.AEZ 3899?
- ii. Whether the petitioners are entitled to any compensation, if so, to what amount and from whom?
- iii. To what relief?

9 During the course of trial, on behalf of the petitioners P.Ws.1 to 4 were examined and Exs.A.1 to A.9 and Exs.X.1 to X.5 were marked. On behalf of the respondents, no oral evidence was let in, but Ex.>B.1 was marked on behalf of the second respondent.

10 The Tribunal, after appreciating the oral, documentary evidence and other material available on record, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 24 V 1256 as well as the driver of the RTC bus bearing No.AEZ 3899 in the ratio of 50 : 50 and allowed the petition in part by awarding an amount of Rs.7,00,480/- with interest at 7.5% p.a. from the date of filing of the petition till the date of realization and directed the respondent Nos.1 to 3 to deposit the same jointly and severally. As stated supra, feeling aggrieved by the said finding of the Tribunal, the second respondent – insurer of the auto filed MACMA No.929 of 2009 and the third respondent – Corporation filed MACMA No.744 of 2010.

11 The learned counsel for the second respondent submitted that the Tribunal erred in fastening the liability on the driver of the auto. He further submitted that the finding of the Tribunal that the driver of the auto was also equally responsible to cause the accident is not supported by any material.

12 *Per contra*, the learned counsel for the third respondent submitted that Tribunal has not rightly considered Ex.A.1-FIR and Ex.A.2-Final Report in right perspective. He further submitted that the finding of the Tribunal that the driver of the RTC bus was also equally responsible to cause the accident is not supported by any documentary evidence.

13 Now the only point that emerges for consideration in these appeals is:

Whether the Tribunal is not justified in apportioning the negligence on the part of the drivers of the auto and the RTC bus in the ratio of 50 : 50?

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Point:

14 The learned counsel for both respondent Nos.2 and 3 have in all fairness submitted that they are not questioning the quantum of compensation awarded by the Tribunal. Admittedly the claimants have not filed appeal or cross objections challenging the quantum of compensation awarded by the Tribunal. A perusal of the record clearly reveals that the Tribunal awarded just and reasonable compensation. Hence I am not inclined to dwell into the issue of quantum of compensation awarded by the Tribunal.

15 To prove the manner of accident, the first petitioner himself was examined as P.W.1 and got marked Exs.A.1 and

A.2. P.W.3 is the eyewitness to the accident. Neither the second respondent nor the third respondent chose to examine any body to prove the manner of accident and at whose fault the accident occurred. A perusal of the testimony of P.W.1 reveals that he is not an eyewitness to the accident, therefore, his testimony is no way helpful to prove the negligence if any on the part of the drivers of both the vehicles. As seen from the testimony of P.W.3, on the date of accident, she was travelling in the auto bearing No.AP 24 V 1256 along with the deceased and others. As per the testimony of P.W.3, just prior to the accident, the driver of the auto was changing cassette in the tape recorder and in that process dashed against the RTC bus which was coming in opposite direction. It is not the case of the respondent Nos.2 or 3 that by the time of accident, P.W.3 was not travelling in the auto. In the lengthy cross-examination of this witness, respondent Nos.2 and 3 tried to establish that there was no negligence or rashness on the part of their respective drivers. But in the cross examination P.W.3 in unequivocal terms deposed that the accident occurred due to the rash and negligent driving of the drivers of the auto as well as the RTC bus. The testimony of P.W.3 clinchingly establishes that the driver of the RTC bus had an opportunity to avert the accident if he had taken a little care and caution. In the cross examination of P.W.3 nothing is elicited by the respondent Nos.2 and 3 to shake her testimony so far as the manner of accident as well as the negligence on the part of the drivers of both the vehicles are concerned. P.W.3 is an independent witness whose testimony cannot be discarded on flimsy grounds. Viewed from any angle, P.W.3 cannot be treated as a tainted witness or tutored witness. It is the duty of the Court or the Tribunal to ascertain the truthfulness or otherwise of the testimony of a witness so as to

arrive at a just and reasonable conclusion.

16 The learned counsel for the third respondent submitted that the finding of the Tribunal would have been otherwise if it had considered the recitals of Exs.A.1 and A.2 in right perspective. First Information Report is not a substantial piece of evidence. Third respondent has not taken any steps to examine the author of Ex.A.1. A perusal of Ex.A.2 reveals that the police referred the case due to the death of the driver of the auto. If really there was no negligence on the part of the driver of the RTC bus, what prevented the third respondent to examine the driver of the RTC bus to demolish the case of the petitioners? Similarly, if really there was no negligence on the part of the driver of the auto, what prevented the second respondent to examine an eyewitness to the accident to substantiate the stand taken by it? Mere taking a specific plea in the counter by itself would not amount to proof of the stand taken by it unless the same is supported by any evidence much less legally admissible evidence. The only evidence available on record is the testimony of P.W.3 to establish the manner of the accident and the negligence on the part of the drivers of both the vehicles. There are no grounds much less valid grounds to discard the evidence of P.W.3. The testimony of P.W.3 is cogent, convincing and inspiring the confidence of this Court.

17 At this juncture, the learned counsel for the second respondent had drawn my attention to ***The New India Assurance Co. Limited Vs. Dulam Nageswara Rao and 5 others***^[1] wherein this Court held at para No.19 as under:

19. In view of the above, the maxim laid down in T.O. ANTHONY's Case (1 supra) and SYED IBRAHIM's Case (2 supra) that where there is composite negligence, all the wrong doers are equally liable for payment of compensation to the claimant, applies to the present case since, as held above, both

the drivers of the lorry and the taxi are responsible for the accident and the claimant is a passenger in the taxi.

18 The Tribunal has assigned cogent and valid reasons to its findings. In the instant case, the accident occurred due to head on collision. The drivers of both the vehicles, in one way or the other, contributed to cause the accident. In case of composite negligence, the Tribunal has to apportion the negligence basing on the facts and circumstances of each and every case.

19 Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 24 V 1256 as well as the driver of the APSRTC bus bearing No.AEZ 3899 in the ratio of 50 : 50. There are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

20 In the result, both the appeals are dismissed. No order as to costs. As a sequel, the miscellaneous petitions, pending in these appeals, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 26th March, 2015.

kvsn

[\[1\]](#) 2011 (6) ALD 575