

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.1565 OF 2014

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (the Act), challenging the order dated 09.10.2009 passed in M.V.O.P.No.1068 of 2007 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Khammam, wherein and whereby the Tribunal allowed the petition in part by awarding compensation of Rs.4,00,000/-.

2. The parties to this appeal will hereinafter be referred to as they are arrayed before the Tribunal, to avoid confusion.

3. The facts leading to filing of the appeal are briefly as follows: On 03.5.2005, at about 05.30 a.m., Samineni Srinivasa Rao was proceeding on his work by driving Auto bearing No.AP 16 TU 7469. When he reached near Pallipadu stage, the driver of lorry bearing No.AP 16TT 4566, who was proceeding ahead of the Auto of Srinivasa Rao, suddenly stopped the lorry on the road without any signal or indication. Srinivasa Rao's attempts to avert the accident proved futile and the Auto dashed the lorry from its behind. The Station House Officer, Konijerla Police Station registered a case in Crime No.57 of 2005 under Section 337 IPC against the Samineni Srinivasa Rao. On 09.5.2005, Samineni Srinivasa Rao (hereinafter referred to as, the deceased) succumbed to the injuries sustained in the accident, while undergoing treatment in Mythri Multi Specialty Hospital, Hyderabad. After death of Srinivasa Rao, the Police altered the Section of law from 337 IPC to Section 304A IPC and filed final report in view of death of Srinivasa Rao. By the time of the accident, the deceased was aged about 30 years and used to earn Rs.4,500/- per month as driver-cum-owner of the Auto. The first petitioner is the wife, second petitioner is the son, and petitioner Nos.3 and 4 are parents of the deceased; and they are all dependants on the income of

the deceased. The lorry bearing No.AP 16 TT 4566, which was originally belongs to first respondent, was transferred to the second respondent, and it was insured with third respondent company. The respondent No.2 is insurer of the Auto bearing No.AP 16 TU 7469. Hence, the petition against respondent Nos.1 to 4 claiming a compensation of Rs.4,00,000/- with interest and costs.

4. The respondent Nos.1 and 2 remained *ex parte*. The third respondent filed written statement denying all the averments made in the petition including the manner of the accident, age and income of the deceased. The accident occurred due to the rash and negligent driving of the Auto by the deceased and there was no negligence on the part of the driver of the lorry. It is the duty of the petitioners to prove that the driver of the lorry was having valid and effective driving licence as on the date of the accident. The amount of compensation claimed by the petitioners is highly excessive and exorbitant.

5. The fourth respondent—insurer of the Auto, filed counter, *inter alia*, contending that the accident occurred due to the rash and negligent driving of the driver of the lorry; therefore, this respondent is not a necessary and proper party to this petition. Hence, the petition may be dismissed against this respondent.

6. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident took place on account of rash and negligent driving of crime vehicle lorry bearing No.AP 16 TT 4566 by it's driver?
2. Whether the petitioners are entitled to claim compensation? If so, to what amount and from which of the respondents?
3. To what relief?

7. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the

third respondent, R.W.1 was examined and Ex.B1 was marked. On behalf of fourth respondent, R.W.2 was examined but no document was marked.

8. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at the conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry as well as the deceased, which resulted in the death of the deceased (driver of the Auto) and allowed the petition by awarding a compensation of Rs.4,00,000/- while apportioning the negligence on the part of both the drivers in the ratio of 50% each. As there was 50% negligence on the part of the deceased, the petitioners have to forego Rs.2,00,000/- and respondent Nos.1 to 3 are jointly and severally liable to pay compensation of Rs.2,00,000/- to the petitioners with costs and interest at 7.5% per annum from the date of the petition till the date of deposit. The petition against respondent No.4 was dismissed. Feeling aggrieved by the judgment and award of the Tribunal, the second respondent—Insurance company preferred the present appeal.

9. The contention of the learned counsel for the third respondent is three fold:

(1) the finding of the Tribunal that the accident occurred due to the negligence of the driver of the lorry also is not sustainable either on facts or on law;

(2) the Tribunal has not properly considered the recitals of the documents on record and allowed the petition on assumptions and presumptions;

(3) the findings recorded by the Tribunal are not supported by oral or documentary evidence available on record.

Per contra, the learned counsel for the claimants submitted that the Tribunal rightly considered Exs.A1 and A2 and arrived at just and reasonable conclusion. He further submitted that there are no grounds

much less valid grounds to interfere with the judgment and award of the Tribunal.

10. Basing on the rival contentions, the point that arises for consideration in this appeal is:

Whether the finding of the Tribunal that the accident occurred due to the negligence of the Auto driver (deceased) as well as the driver of the lorry is not sustainable either on facts or on law?

Point:

11. To substantiate the case, the first petitioner examined herself as P.W.1 and got marked Exs.A1 to A6. P.W.2 is the eye witness to the accident. To demolish the case of the petitioners, third respondent examined R.W.1 and marked Ex.B1 policy. The oral testimony of P.W.1 coupled with Ex.A2 postm-mortem certificate and Ex.A3 inquest panchanama clearly reveals that Samineni Srinivasa Rao died of injuries sustained in a road accident that occurred on 03.5.2005 at about 05.30 a.m. As per the testimony of P.W.1, on the date of accident Srinivasa Rao was proceeding towards Wyra by driving his Auto. When he reached near Pallipadu stage, the driver of the lorry had all of sudden stopped the lorry on the road due to which Auto of deceased dashed against the lorry. Admittedly, P.W.1 and R.W.1 are not eye witnesses to the accident. Therefore, their testimony is not much helpful to prove the manner of the accident. If the testimony of P.W.1 and R.W.1 is taken into consideration, the accident occurred due to the negligence of the drivers of the Auto (deceased) as well as the lorry. The Tribunal has not placed reliance on the testimony of P.W.2. The fact remains that the accident occurred on 03.5.2005 at Pallipadu village. If really the accident occurred due to the rash and negligent driving of the driver of the Auto (deceased) only, what prevented the driver of the lorry to lodge the complaint to the concerned Police, immediately after the accident, against the driver of the Auto. On the other hand, basing on the complaint lodged by the Village Secretary, the Police registered the case against the

deceased. After completion of the investigation, the case was closed in view of death of the deceased. The first petitioner filed a protest petition and the same was dismissed by the learned Magistrate. A perusal of Ex.A5 reveals that the first petitioner filed Crl.R.P. No.38 of 2007 on the file of District Court, Khammam challenging the order passed by the learned Magistrate. The learned District Judge has considered the material available on record, in right perspective, and allowed the Crl.R.P. holding that even though the driver of the lorry was not responsible for the accident, he has not followed the provisions of the M.V. Act while parking the vehicle on the road.

12. The contention of the petitioners is that the driver of the lorry while proceeding at high speed stopped the same without any reason much less justifiable reason. No one will expect that the vehicle, which was proceeding ahead of them, would be stopped without any signal. As observed earlier, if really the driver of the lorry has not stopped the vehicle all of a sudden, what prevented him to lodge a complaint to the Police immediately. For one reason or the other, the third respondent (insurer of the lorry) has not taken any steps to examine the driver of the lorry or any other eye witness to the accident, to prove that there was no negligence on the part of the driver of the lorry or that the driver of the lorry had stopped it on the extreme left side of the road, after duly following the traffic rules. The manner of the accident, as narrated in Exs.A1 and A5, clearly indicates negligence on the part of the driver of the lorry. If the driver of the lorry had not stopped the lorry on the road all of a sudden, the unfortunate accident might not have occurred. At the same time, if the deceased had maintained reasonable distance from the lorry proceeding in front of his auto, he might have averted the accident to a certain extent. The material available on record clinchingly establishes that the accident occurred due to the negligence on the part of the driver of the lorry as well as the driver of the Auto (deceased).

13. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to negligent driving of the drivers of both the lorry and the Auto in the ratio of 50% each. I am fully agreeing with the finding of the Tribunal in apportioning the negligence on the part of the drivers of both the vehicles at 50% each. There are grounds much less valid grounds to set aside the findings of the Tribunal so far as the manner of the accident and the ratio of negligence on the part of the drivers of both the vehicles are concerned. Accordingly, the point is answered.

14. The third respondent is not seriously disputing the quantum of compensation awarded by the Tribunal. Even otherwise, the Tribunal has awarded just and reasonable compensation. Therefore, there are no grounds to interfere with the quantum of compensation awarded by the Tribunal in this appeal.

15. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 01.09.2015.

YS