

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.683 of 2009

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the petitioners challenging the judgment and award, dated 01.04.2006 passed in O.P.No.261 of 2003 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, at Mahabubnagar (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the appeal, in brief, are as follows:

On 15.06.2001, Sri S.A.Raheem (hereinafter referred to as 'the deceased') boarded a lorry bearing No.AP11-T/5699 at Jadcherla bus stand to go to Kothakota in order to attend telecom repairing works. When the lorry reached Thatiparthi Shivar, the driver of the DCM Van bearing No.AP-03-U/3214 (for short, 'the crime vehicle') had driven the same in a rash and negligent manner and hit the lorry coming from opposite direction. Due to accident, the deceased sustained grievous injuries on various parts of the body. On 15.06.2001 the deceased succumbed to injuries while undergoing treatment in Government Civil Hospital, Jadcherla. The Station House Officer, Annasagar Police Station registered a case in Crime No.70 of 2001 under Sections 304-A and 337 I.P.C. against the driver of the crime vehicle. By the time of death, the deceased was aged about 32 years and used to earn Rs.6,710/- per month as an employee in Telecom Department. Petitioner No.1 is the wife, petitioner Nos.2 and 3 are the children and petitioner No.4 is the mother of the deceased and they are dependents on the income of the deceased. The first respondent is the owner of the crime vehicle, which was insured with the second respondent at

the relevant point of time. Therefore respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners. The petition is filed under Section 166 of the Act and Rule 514 of the A.P.Motor Vehicles Rules, 1994 claiming compensation of Rs.4,00,000/-.

4. The first respondent remained *ex-parte*. The second respondent filed counter denying the material averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the driver of the lorry and there was no negligence on the part of the driver of the crime vehicle. It is the duty of the petitioners to establish that the driver of the crime vehicle was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

1. Whether the accident occurred on 15-6-2001 at about 7-00 PM, on NH.No.7 near Thatiparthi Shivar, due to rash and negligent driving of DCM Van bearing No.AP-03-U-3314, by its driver and whether it resulted in causing the death of deceased S.A.Raheem?
2. Whether the petitioners are entitled for any compensation? if so, to what amount, and from whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, PWs.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the second respondent, no oral evidence was adduced and Ex.B.1 – Policy was marked.

7. The Tribunal, on appraisal of material available on record, arrived at a conclusion that the accident occurred due to the

negligence of both vehicle drivers and apportioned the negligence in the ratio of 50:50 and allowed the petition in part by awarding compensation of Rs.2,45,000/-.

8. Feeling aggrieved by the judgment and award of the Tribunal, the petitioners/claimants preferred the present appeal.

9. Sri A.Rajendra Babu, the learned counsel for the appellants/petitioners, submitted that the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the drivers of both vehicles is not sustainable either on facts or on law. He further submitted that the amount of compensation awarded by the Tribunal is not just and reasonable. He also submitted that it is a case of composite negligence and therefore, the petitioners/claimants are entitled to file the O.P. against one of the wrong doers i.e., one of the drivers and owner of the vehicle and this aspect was not considered by the Tribunal.

10. Per contra, Sri Naresh Byrapaneni, the learned Standing Counsel for the National Insurance Company Limited (second respondent), submitted that the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the drivers of both vehicles is fully supported by the material available on record. He further submitted that the petitioners are not entitled more compensation than the amount claimed.

11. Now the points that arise for consideration in this appeal are:

1. Whether the accident in question can be treated as composite negligence or contributory negligence?

2. Whether the petitioners are entitled to claim compensation from one of the vehicle drivers, owners and insurer?

3. Whether the amount of compensation awarded by the Tribunal is just and reasonable?

12. Point Nos.1 and 2:

Point Nos.1 and 2 are interlinked with each other, hence, I am inclined to decide these two points simultaneously to avoid repetition.

To prove the rash and negligence on the part of the driver of the crime vehicle, petitioner No.1 examined herself as PW.1 and got marked Exs.A.1, A.2 and A.4. As seen from the testimony of PW.1, the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. Admittedly, PW.1 is not an eye witness to the accident. Therefore, her testimony is not much helpful so far as this aspect is concerned. As seen from the testimony of PW.2, at the time of accident, he was travelling in the lorry along with the deceased. As per the testimony of PW.2, the crime vehicle came from wrong side and dashed to the lorry. In the cross-examination of PW.2, nothing is elicited to shake his testimony so far as the manner of the accident is concerned. As per the recitals of Ex.A.1 – C.C. of F.I.R. and Ex.A.2 – C.C. of charge sheet, the accident occurred due to the rash and negligent driving of the driver of the crime vehicle and there was no negligence on the part of the driver of the lorry in which the deceased was travelling at the time of accident. As per Ex.A.4 – C.C. of M.V.I. report, there was no mechanical defect in the crime vehicle. A perusal of Ex.A.3 – CC of P.M.E report clearly reveals that the deceased died due to the injuries sustained in a road accident. The oral testimony of PWs.1 and 2 coupled with Exs.A.1 and A.2 clearly reveals that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle.

13. If really the accident occurred due to the negligence of the driver of the lorry, what prevented the second respondent to examine the driver of the crime vehicle? For one reason or other, the second

respondent has not taken any steps to examine either the driver of the crime vehicle or any other eye witness to demolish the stand taken by the petitioners. The Tribunal has to consider the material available on record while deciding the issues framed. It is not in dispute that the Tribunal has not framed an issue with regard to the contributory negligence on the part of the driver of the lorry. Without affording a reasonable opportunity to the petitioners, the Tribunal arrived at a conclusion that the driver of the lorry was also equally responsible to cause the accident.

14. In para-14, the Tribunal made an observation that it is a case of head on collision. Therefore, both vehicle drivers were equally responsible to cause the accident. The Tribunal itself assumed that the accident might have occurred due to the rash and negligent driving of the drivers of both vehicles. It is needless to say that the finding of the Tribunal must be based on oral and documentary evidence. The Tribunal made an observation that the petitioners have failed to produce the panchanama of scene of offence. On this ground only, the Tribunal apportioned the negligence on the drivers of both vehicles in the ratio of 50:50 which is not permissible under law.

15. The Tribunal has to take into consideration whether the injured or deceased was directly or indirectly played any role to cause the accident or not? Even as per the stand taken by the second respondent, the deceased was no way responsible to cause the accident. In case of head on collision, it is only a composite negligence on the part of the both vehicle drivers. In this case the question of contributory negligence does not arise as the deceased is a third party to the accident. In order to resolve the issue, the Tribunal is placing reliance on the following decisions:

1. **T.O. Anthony v. Karvarnan & others**^[1], wherein in paras 5 and 6, the Hon'ble Apex Court held as under:

“5. The Tribunal assumed that the extent of negligence

of the appellant and the first respondent is fifty:fifty because it was a case of composite negligence. The Tribunal, we find, fell into a common error committed by several Tribunals, in proceeding on the assumption that composite negligence and contributory negligence are the same. In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned.

6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence."

2. Syed Ibrahim v. The Union of India (UOI), Rep. by the Secretary to Central Government, Ministry of Defence and another^[2], wherein in para 6 this Court held as under:

“Admittedly, the appellant is the pillion rider on the scooter and there was collision between a jeep and the scooter on which the appellant was travelling. Even assuming that there was compound negligence on the part of the drivers of both the vehicles, the appellant has a right to proceed against any of the joint tort feors and claim damages from them, because, he himself is not responsible for the accident. It is well know that the victim of an action by joint tort-feasors can proceed against any or all of the joint tort feors and if one of the joint tort feors feels that he is not liable and the other joint torn feator should be made liable, his remedy is only to proceed against the other tort feator and seek reimbursement of the amount paid to the victim. For that reason also, the question as to on account of whose negligence the accident occurred is not very relevant for deciding the claim of the appellant, who is a third party to the accident. He can claim damages against either or both the drivers and owners of the vehicles involved in the accident.”

3. Sombathina Ramu v. T.Srinivasulu and another^[3], wherein in para 10, this Court held as under:

“Therefore, the legal principle that emerges is that only in cases of contributory negligence, the contributor of such negligence cannot make a claim for payment of compensation in whole without accounting for his part of contribution. In other words, the extent of the role played by him as assessed by the Court will be taken into account and consideration for the purpose of setting off to a corresponding extent the payment of compensation for the injuries sustained. But, however, in cases of composite negligence, the suitor, having no role to play either directly or remotely and having not contributed any negligence to the causative factors of the injury, is therefore entitled to seek compensation from all of them or any one of them. It is a choice left to him. Correspondingly, it does not lie in the mouth of one of the wrong doers to insist upon the other or all the wrong

doers also either to be impleaded or proportionately mulcted with the obligation to compensate the injured.”

4. **A.P.S.R.T.C. and another v. K.Hemalatha and others**^[4],

wherein in paras 10 and 11, the Hon'ble Apex Court held as under:

“10. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

11. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal

ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.”

The Full Bench of the Hon’ble Apex Court in Civil Appeal No.5906 of 2008 in **Pawan Kumar and another. ETC. v.**

M/s. Harkishan Dass Mohan Lal and others, reiterated the principle enunciated in the cases cited in **T.O.Anthony** (supra 1) and **A.P.S.R.T.C.** (supra 4) and in paras 8 and 9 held as under:

“8. In the present case, neither the driver/owner nor the insurer has filed any appeal or cross objection against the findings of the High Court that both the vehicles were responsible for the accident. In the absence of any challenge to the aforesaid part of the order of the High Court, we ought to proceed in the matter by accepting the said finding of the High Court. From the discussions that have preceded, it is clear that the High Court was not correct in apportioning the liability for the accident between drivers/owners of the two vehicles.

9. We, accordingly, hold that the drivers/owners of both the vehicles are jointly and severally liable to pay compensation and it is open to the claimants to enforce the award against both or any of them. The order of the High Court dated 05.07.2006 is modified to the extent indicated above and the appeal is allowed.”

16. Having regard to the facts and circumstances of the case on hand and also the principle enunciated in the cases cited supra, the accident in question is the result of composite negligence on the part of the both vehicle drivers. The Insurance Company cannot compel the third party to the accident to implead the other wrong doer also. It is the choice of the third party to the accident either to implead the owner and Insurance Company of the both vehicles or to file a petition against one of the vehicle owner and insurer. Merely because the claimant has not impleaded the owner and insurer of other vehicle, that

by itself, is not a valid ground to deprive the claimants to claim the entire compensation. In the instant case, the second respondent has not adduced any evidence to prove the negligence on the part of the driver of the lorry. Even assuming but not admitting that it is a case of head on collision, the petitioners, who are the legal representatives of the deceased, are entitled to file the claim petition against one of the vehicle owner and insurer. If the second respondent feels that the accident occurred due to the negligence on the part of the driver of the lorry, it can recover the amount from the other insurer by following the procedure contemplated under law.

17. It is not the case of the second respondent that the deceased also contributed either directly or indirectly to cause the accident in question. In such circumstances, apportionment of negligence on the part of both vehicles drivers does not arise. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the drivers of both the vehicles in the ratio of 50:50 is not legally sustainable. In case of composite negligence, the Tribunal need not fix the ratio of negligence on the part of both vehicle drivers. Therefore, the finding of the Tribunal on issue No.1 is hereby set aside.

Point No.3:

18. The petitioners filed a petition claiming compensation of Rs.4,00,000/- only. The Tribunal awarded a compensation of Rs.4,90,000/-. The Tribunal apportioned the compensation amount between the owners and insurer of two vehicles.

19. Except the self-served testimony of PW.1, there is no convincing evidence to prove that by the time of accident, the deceased was working in Telecom Department. If really the deceased was working as an employee in Telecom Department, what prevented the petitioners to examine the concerned person to prove his avocation

and income by the time of his death. The Tribunal rightly disbelieved the oral testimony of witnesses so far as the avocation and income of the deceased is concerned. However, in the absence of documentary evidence, some guess work is inevitable to assess the income of the deceased. The accident occurred way back in the year 2001. The Tribunal has taken the income of the deceased as Rs.4,500/- per month. Therefore, I am unable to accede to the contention of the learned counsel for the petitioners/appellants that the Tribunal has not considered the income of the deceased in right perspective. The Tribunal deducted 1/3rd towards personal expenses of the deceased and arrived at a conclusion that the contribution of the deceased per month is Rs.3,000/-. Per annum it comes to Rs.36,000/-. The Tribunal awarded compensation of Rs.4,90,000/- (36,000 x 13). The Tribunal held that the petitioners are entitled to Rs.2,45,000/- basing on its finding on issue No.1. As observed earlier, the question of contributory negligence on the part of the deceased does not arise. Therefore, the petitioners are entitled to recover the entire amount from the respondents. A perusal of the record reveals that the petitioner filed the present appeal claiming an amount of Rs.1,55,000/- only as the Tribunal directed the respondents to pay an amount of Rs.2,45,000/-. A perusal of the record clearly reveals that the petitioners have restricted their claim to the extent of Rs.4,00,000/- only. Even though the petitioners are entitled for Rs.4,90,000/-, the Tribunal has awarded an amount of Rs.4,00,000/- in view of the restriction of the claim in the appeal by the petitioners themselves.

20. In the result, the Appeal is allowed by awarding compensation of Rs.4,00,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. Respondent Nos.1 and 2 are hereby directed to deposit the compensation amount with interest within two (2) months, if not already deposited. There shall be no order as to costs.

21. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

02nd February, 2015
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[\[1\]](#) (2008) 3 SCC 748

[\[2\]](#) 2003 (3) ALD 851

[\[3\]](#) 2008 (4) ALT 14

[\[4\]](#) 2008 (5) SCJ 29