

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.767 OF 2009

JUDGMENT:

This appeal is preferred by the appellants/petitioners challenging the judgment and award, dated 07.04.2004 passed in M.V.O.P.No.36 of 2000 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum- District Judge, Guntur (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 present appeal are, briefly, as follows:

On 26.07.1999, Devarakonda Satyanarayana along with others was proceeding to Phirangipuram from Guntur in the Van bearing No.APW 2231. When they reached near Kalpana Stone Crushers, the driver of the Lorry bearing No.AP 7T 6066 had driven the same in a rash and negligent manner and dashed against the van. The accident occurred due to the rash and negligent driving of the driver of the lorry, against whom the Station House Officer, Medikonduru Police Station registered a case in Crime No.85 of 1999 for the offences punishable under Sections 304-A and 337 I.P.C. Due to accident, Satyanarayana (hereinafter referred to as 'the deceased') sustained grievous injuries and died. By the time of accident, the deceased was aged about 40 years and used to earn Rs.3,000/- per month. The petitioners are dependants on the income of the deceased. The lorry, which belongs to respondent No.1, was insured with respondent No.2 – Insurance Company with effect from 19.05.1999 to 18.05.2000. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2,00,000/- to the petitioners.

4. Respondent No.1 filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the driver of the van and there was no negligence on the part of the driver of the lorry. The lorry was insured with respondent No.2 – Insurance Company as on the date of accident. Therefore, respondent No.2 alone is liable to pay compensation, if any, to the petitioners.

5. Respondent No.2 filed counter denying all the averments made in the petition

inter alia contending that this respondent is not liable to pay compensation to the petitioners unless the petitioners establish that the driver of the lorry was having valid and effective driving licence as on the date of accident. The accident occurred due to overload of the van in which the deceased was travelling. The petition is not maintainable for non-impleading of the driver, owner and insurer of the van. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

1. Whether the deceased died in the accident due to the rash and negligent driving of the Ashok Leyland Tipper Lorry No.AP.7T-6066 by its driver?
2. To what compensation amount the petitioners are entitled to and against whom?
3. To what order?

7. The Tribunal clubbed M.V.O.P.Nos.36, 37 and 38 of 2000 and recorded the evidence in M.V.O.P.No.36 of 2000.

8. During the course of trial, on behalf of the petitioners, P.Ws.1 to 4 were examined and Exs.A.1 to A.14, X.1 and X.2 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

9. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to composite negligence of the drivers of the Tipper Lorry bearing No.AP 7T 6066 and the Jeep (Willies Van) bearing No.APW 2231 in 50:50 ratio and allowed the petition in part by awarding total compensation of Rs.1,64,400/- with interest at the rate of 9% per annum from the date of petition till the date of deposit.

10. Feeling aggrieved by the judgment and award of the Tribunal, the petitioners preferred the present appeal.

11. Heard Sri B.Parameswar Rao, the learned counsel for the appellants/petitioners and Sri N.S.Bhaskara Rao, the learned counsel for respondent No.2.

12. The contention of the learned counsel for the petitioners is three fold: (1) The

finding of the Tribunal that the accident occurred due to the negligence of the both vehicles' drivers in the ratio of 50:50 is not sustainable either on facts or on law; (2) The Tribunal has failed to consider that the criminal case was registered against the driver of the lorry; and (3) The finding of the Tribunal that the petitioners have to forego 50% of the compensation amount in view of non-impleading of owner and insurer of van is not sustainable.

13. Per contra, the learned counsel for respondent No.2 submitted that the Tribunal has assigned cogent and valid reasons to its findings on both issues. He further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

14. Now the point that arises for consideration in this appeal is:

Whether the Tribunal was justified in fixing the liability in the ratio of 50:50 on both vehicles' drivers or not?

Point:

15. As per the testimony of PWs.3 and 4, the accident occurred due to the rash and negligent driving of the driver of the lorry. In the cross-examination of these witnesses, nothing is elicited to shake their testimony so far as the manner of the accident is concerned. As per the recitals of Exs.A.1 – Certified Copy of F.I.R. and A.2 – Certified Copy of charge sheet, the accident occurred due to the rash and negligent driving of the driver of the lorry. As per the recitals of Ex.A.5 – Certified Copy of Motor Vehicles Inspector's report, there was no mechanical defect in the lorry. The oral testimony of PWs.1, 3 and 4 is supported by the recitals of Exs.A.1, A.2 and A.5 so far as the rashness and negligence on the part of the driver of the lorry is concerned. If really the accident occurred due to the negligence of the driver of the van, what prevented the driver of the lorry to lodge a complaint against him?

16. For one reason or other, respondent Nos.1 and 2 did not take any steps to examine the driver of the lorry or any other eye witness to the accident to prove the negligence or contributory negligence, if any, on the part of the driver of the van. The

fact remains that the respondents have not taken any steps to adduce evidence much less legally admissible evidence to establish negligence on the part of the driver of the van. Merely because two vehicles involved in the accident that itself is not a valid ground to come to a conclusion that the accident might have been occurred due to the negligence of both vehicles drivers without cogent and convincing evidence. The Tribunal arrived at a conclusion that the accident occurred due to the negligence of both vehicles' drivers on assumptions and presumptions. The finding of the Tribunal is not supported by any material. In order to resolve the issue, this Court is placing reliance on the following decisions:

1 . T.O. Anthony v. Karvarnan & others, 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.”

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2. Syed Ibrahim v. The Union of India (UOI), Rep. by the Secretary to Central Government, Ministry of Defence and another, 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 tortfeasors and claim damages from them, because, he himself is not responsible for the accident. It is well known that the victim of an action by joint tortfeasors can proceed against any or all of the joint tortfeasors and if one of the joint tortfeasors feels that he is not liable and the other joint tortfeasor should be made liable, his remedy is only to proceed against the other tortfeasor 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, wherein in para 10, this Court held as under:

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“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.”

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4. A.P.S.R.T.C. and another v. K.Hemalatha and others, 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.”

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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.”

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17. It is not the case of respondent No.2 that the deceased directly or indirectly was responsible to cause the accident. As per the principle enunciated in the cases cited supra, in case of head on collision of two vehicles, the legal representatives of the deceased are entitled to file a petition against both or one of the joint tort-feasors. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the finding of the Tribunal that the accident occurred due to the negligence of the both vehicles' drivers in the ratio of 50:50 is not sustainable either on facts or on law. The finding of the Tribunal on issue No.1 is hereby set aside. Hence, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry which resulted in the death of the deceased.

18. Respondent No.2 has not filed any appeal or cross objections challenging the quantum of compensation. The quantum of compensation awarded by the Tribunal became final so far as respondent No.2 is concerned. The amount of compensation awarded by the Tribunal under various heads is just and reasonable to meet the ends of justice. Respondent No.1 being the owner of the vehicle is vicariously liable for the wrongful acts done by his driver during the course of employment. The lorry bearing No.AP 7T 6066 was insured with respondent No.2 with effect from

19.05.1999 to 18.05.2000 and the policy was in force as on the date of accident. Therefore, respondent No.2 has to indemnify the liability of respondent No.1.

19. In the result, the Appeal is allowed and the petitioners are entitled for compensation of Rs.1,64,400/- with interest at the rate of 9% per annum from the date of petition till the date of deposit. Respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioners. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 07.04.2015

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