

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.804 OF 2009

JUDGMENT:

This appeal is preferred by the appellants/petitioners challenging the judgment and award, dated 19.08.2008 passed in M.V.O.P.No.218 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, East Godavari District, Rajahmundry (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 08.01.2004, one Geddam Veeravenkata Satyanarayana @ Satti Babu was proceeding to Rajahmundry from Badrak in a lorry bearing No.AP 16X 7088 and when it reached Bhaliagada Village on N.H.-5 road of Orissa State, respondent No.1 had driven the same in a rash and negligent manner and dashed against a bus. The accident occurred due to the rash and negligent driving of the lorry by respondent No.1 against whom the Station House Officer, Golanthara Police Station (Ganjam District in Orissa State) registered a case in Crime No.2 of 2005 for the offence punishable under Section 304-A I.P.C. Satti Babu (hereinafter referred to as 'the deceased') died on the spot due to injuries sustained by him. By the time of accident, the deceased was aged about 32 years and used to earn Rs.3,500/- per month as lorry cleaner. The petitioners are dependants on the income of the deceased. The lorry which belongs to respondent No.2 was insured with respondent No.3 – Insurance Company. Therefore, respondent Nos.1 to 3 are jointly and severally liable to pay compensation of Rs.4,50,000/- to the petitioners. Hence, the petition.

4. The petition against respondent No.1 was dismissed. Respondent No.2 remained *ex-parte*. Respondent No.3 filed written statement denying all 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 bus bearing No.

OR-07/A/3336. Therefore, the driver, owner and insurer of the said bus are proper and necessary parties to this petition. The amount of compensation claimed by the

petitioners under various heads is highly excessive and exorbitant. The petition is liable to be dismissed for non-impleading of necessary and proper parties. Hence, the petition may be dismissed.

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

1. Whether the accident was due to rash and negligent driving of lorry bearing registration No.AP 16X 7088 and bus bearing registration No.OR 7A 3336?
2. Whether the petitioners are entitled for the compensation amount as claimed? If so, from which of the respondents?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 to A.9(a) were marked. On behalf of the contesting respondent, no oral evidence was let in and Exs.B.1 and B.2 were marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the petitioners have failed to prove negligence on the part of driver of lorry and allowed the petition in part by awarding compensation of Rs.1,08,468/- with interest at the rate of 6% per annum from the date of petition till the date of deposit.

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

9. Heard Sri Chandra Sekhar Ilapakurti, the learned counsel for the appellants/petitioners and Sri P.Bhaskar, the learned Standing Counsel for respondent No.3 – Oriental Insurance Company Limited.

10. The contention of the learned counsel for the petitioners is three fold: (1) The finding of the Tribunal that the petitioners are entitled to 50% of the awarded amount only is not sustainable either on facts or on law; (2) The question of determining the contributory negligence does not arise in this case as the deceased has nothing to do with the accident; and (3) The amount of compensation awarded by the Tribunal under various heads is too meagre.

11. Per contra, the learned Standing Counsel for respondent No.3 submitted that the

Tribunal has rightly considered the oral and documentary evidence and fixed the negligence on the part of both vehicle drivers. He further submitted that the amount of compensation awarded by the Tribunal under various heads is just and reasonable.

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

1. Whether the Tribunal is justified in determining the negligence on the part of both vehicle drivers or not?
2. Whether the amount of compensation awarded by the Tribunal under various heads is just and reasonable or not?

Point No.1:

13. To prove the manner of the accident, petitioner No.1 examined herself as PW.1 and got marked Exs.A.1 to A.9(a). A perusal of the testimony of PWs.1 and 2 reveals that they are not eye witnesses to the accident. Therefore, their testimony is not much helpful to prove the manner of the accident and negligence, if any, on the part of respondent No.1. As per the recitals of Exs.A.1 to A.9(a) – 161 statements of the witnesses, the accident occurred due to the rash and negligent driving of the driver of the lorry. The oral testimony of PWs.1 and 2 is supported by the recitals of Exs.A.1 to A.9(a). Respondent No.3 has not taken a specific plea in the written statement that the accident occurred due to the negligence of the driver of the bus. Respondent No.3 has not taken any steps to examine the respondent No.1 or any other eye witness to the accident to prove the negligence, if any, on the part of the driver of the bus. In the cross-examination of PWs.1 and 2, nothing is elicited to shake their testimony. Basing on the material available on record, the Tribunal arrived at a conclusion that the petitioners failed to prove the negligence on the part of the driver of the lorry. It is not in dispute that by the time of accident the deceased was travelling in the lorry as a cleaner. This aspect is not denied by respondent No.3. Even assuming, but not admitting, that the accident occurred due to the negligence of both vehicle drivers, it amounts to composite negligence. In case of composite negligence, the Tribunal has to consider whether the deceased directly or indirectly was responsible to cause the accident or not. No finding was recorded by the Tribunal that the deceased was also equally responsible to cause the accident.

Basing on the material available on record, the only conclusion that can be drawn is that the accident might have occurred due to the negligent driving of respondent No.1 as well as the driver of the bus. 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 wrongdoers to insist upon the other or all the wrongdoers 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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14. Having regard to the facts and circumstances of the case on hand and also the principle enunciated in the cases cited supra, the petitioners are entitled to file a petition against one of the joint tort-feasors. Merely because the claimants have not impleaded the driver, owner and insurer of other vehicle, that by itself, is not a valid ground to apportion the negligence in the ratio of 50:50. Hence, the finding of the Tribunal that the accident occurred due to the negligence of both vehicle drivers is set aside.

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POINT No.2:

15. The Tribunal has given a finding that the deceased might have aged about 40 years and accordingly, it has applied the multiplier as '16'. As per the principle enunciated in **Sarla Verma v. Delhi Transport Corporation**, the appropriate multiplier to be taken for the age group of 36 to 40 years is '15'. The fact remains that by the time of accident, the deceased was working as a cleaner in the lorry. The Tribunal has taken the monthly income of the deceased as Rs.1,437/- basing on G.O.Ms.No.30, Labour, Employment, Training and Factories (Lab.II), dated 27.07.2000. The accident occurred in the year 2004. The Tribunal ought to have taken the minimum wage as on the date of accident. Taking into consideration the facts and circumstances of the case, I am of the considered view that the deceased may earn Rs.2,100/- even under the Minimum Wages Act. Out of which, 1/3rd shall be deducted towards personal expenses of the deceased. The deceased may contribute Rs.1,400/- per month to his family members. The loss of dependency

comes to Rs.2,52,000/-
(1,400 X 12 X15). Petitioner No.1 was aged about 28 years by the time of death of the deceased. The Tribunal has awarded an amount of Rs.33,000/- towards conventional damages.

16. Having regard to the facts and circumstances of the case and also the principle enunciated in **Ramilaben Chinubhai Parmar v. National Insurance Company**, the petitioners are entitled to an amount of Rs.50,000/- under the conventional damages. Thus, the amount of compensation to which the petitioners are entitled to under both the heads is as follows:

01.	Loss of dependency	Rs.2,52,000/-
02.	Conventional damages	Rs. 50,000/-
	Total:	Rs.3,02,000/-

The amount of compensation awarded under both the heads is just and reasonable to meet the ends of justice.

17. The Tribunal awarded interest at the rate of 6% per annum. Taking into consideration the prevailing rate of interest as on the date of passing of the award, I am of the considered view that it is a fit case to award the interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Petitioner No.1 is the wife and petitioner Nos.2 and 3 are children of the deceased. Therefore, they are equally entitled to for the compensation amount.

18. In the result, the Appeal is allowed in part by enhancing the quantum of compensation from Rs.1,08,468/- to Rs.3,02,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. Petitioner No.1 alone is entitled for the entire enhanced amount of compensation. There shall be no order as

to costs.

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

T.SUNIL CHOWDARY, J

Date: 23.03.2015

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