

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ M.A.C.M.A No.2742 of 2009

%23.04.2015

Between:

The National Insurance Company Limited,
Ongole, Rep. by its Branch Manager,
Dharavari Gardens, Ongole. Appellant

AND

A. Bandari Sunitha

and others. Respondents

! Counsel for Appellant : Smt.S.A.V.Ratnam

^ Counsel for Respondent No.1 : Sri Madhavarao Nalluri

< Gist:

> Head Note:

? Cases referred:

1. 2009 ACJ 187 (AP)

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.2742 of 2009

JUDGMENT:

Challenging the compensation awarded in O.P.No.441 of 2005 dated 06.08.2007 by the Chairman, M.A.C.T-cum-VI Additional District Judge (FTC), Markapur (for short “the Tribunal”), the National Insurance company Limited, Ongole preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant—Bandari Sunitha is that on 04.07.2005

at about 4:00pm, she with other school children of her village boarded auto bearing registration No.AP 27 V 5542 at Podili bus stand to go to their village Mugachinthala. On the way, a tractor bearing No.AP 27G 6037 proceeding towards Podili being driven by its driver—1st respondent in a rash and negligent manner dashed the auto and thereby the auto turned turtle and the claimant received multiple injuries. It is averred that auto driver was responsible for the accident. On these averments the claimant filed O.P.No.441 of 2005 under Section 166 of Motor Vehicles Act, 1988 (for short “M.V Act”) against respondents 1 and 2, who are the owners of tractor and auto respectively and respondent No.3—Insurer of the offending auto and claimed Rs.1,00,000/- as compensation under different heads mentioned in OP.

b) Respondent Nos.1 and 2 remained *ex parte*.

c) Respondent No.3/Insurance Company filed counter and opposed the petition contending that accident was caused by the tractor which hit the auto and therefore both the drivers are responsible for the accident and drivers of both the vehicles did not have valid and effective driving licenses at the time of accident. R3 further contended that offending auto was not insured with them hence they are not liable to pay compensation. R3 finally contended that compensation claimed is excessive and exorbitant and prayed for dismissal.

d) During trial, PWs.1 to 4 were examined and Exs.A1 to A6 were marked on behalf of claimant. Ex.B1—policy copy was filed on behalf of respondents.

e) On appreciation of both oral and documentary evidence the Tribunal awarded total compensation of Rs.46,050/- with costs and interest at 8% p.a. against respondents 1 to 3.

Hence, the appeal by Insurance Company.

3) The parties in this appeal are referred as they stood before the Tribunal.

4) Heard arguments of Smt. SAV.Ratnam, learned counsel for appellant/ Insurance Company and Sri Madhavarao Nalluri, learned counsel for 1st respondent/claimant. Notice sent to R2 and R3/owners of the vehicles unserved.

5) The main plank of argument of learned counsel for appellant/ Insurance Company is that the Tribunal having given a finding that accident was occurred due to the fault of both drivers, ought to have apportioned the liability to pay the compensation equally between the two vehicles but instead, held that all the respondents are liable to pay the compensation awarded. By this direction, she argued, since the tractor was not covered with insurance policy, claimant is not proceeding against the first respondent in OP who is the owner-cum-driver of tractor but proceeding against the auto which is covered with insurance policy. She thus prayed to allow the appeal and apportion the liability equally between the owners of tractor and auto.

6) In oppugnation, learned counsel for first respondent/claimant argued that it is a case of composite negligence and two vehicles involved in the accident and the claimant being a third party and not responsible in any manner for the accident, he can claim compensation against both or any one of the tortfeasors and recover the compensation and the appellant/Insurance Company being one of the tortfeasors, cannot contend that compensation should be apportioned between two vehicles and the insurer and insured should be held liable for part of the compensation only. He relied upon the following decision reported in ***Sombathina Ramu v. T.Srinivasulu*** on the aspect of rights of third party in a case of composite negligence of multiple vehicles.

He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination is:

“Whether the Tribunal erred in not apportioning the liability between the two vehicles?”

8) **POINT:** Accident, involvement of auto bearing No. AP 27 V 5542

and tractor bearing No.AP 27G 6037 and injuries to the claimant and other school children is not in dispute. The grievance of the appellant/Insurance Company is that the Tribunal having found both the vehicles responsible for the accident, erred in not apportioning the *inter se* liability and thereby the claimant is proceeding against the owner and insurer of the auto alone since the vehicle was insured.

a) In view of the finding of the tribunal that drivers of auto as well as tractor were responsible for the accident, it is obvious that it is a case of composite negligence on the part of two vehicles and the deceased being a passenger in the auto did not in any manner contribute for the accident. In this back drop, it must be said that law involved on the point raised by the appellant is no more *res integra*.

b) In **Sombathina Ramu's** case (1 supra) cited by first respondent/claimant a learned single Judge of this Court while delineating distinction between "contributory negligence" and "composite negligence" has explained the rights of third party victim in an accident caused by composite negligence of drivers of multiple vehicles. He observed thus:

"10. 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. I, therefore, find force in the submission made by the learned Counsel for the appellant Sri C.Prakash Reddy and hold that the appellant is entitled to recover the whole of the compensation from the first respondent, the owner of the truck. Since the second respondent-insurer had undertaken to indemnify the first respondent because of the contract entered

into as evidenced by Ex.B-1, the liability in this regard becomes joint and several.”

c) In the light of above emphatic ruling on the subject in issue, no further clarification is necessary before holding that the claimant is entitled to proceed against the owner and insurer of the auto i.e. respondents 2 and 3 in the OP and the respondents have no right to question the action on the part of claimant. However, upon payment of compensation, Respondent Nos.2 and 3 in the O.P can recover 50% of compensation amount from other tortfeasor i.e, 1st respondent in the O.P treating this award as decree.

9) In the result, this MACMA is dismissed by confirming the award passed by the Tribunal in O.P.No.441 of 2005. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 23.04.2015

Note: L.R. copy to be marked: Yes/No

Murthy