

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.618 of 2009

JUDGMENT:

Aggrieved by the Award dated 17.03.2005 in O.P.No.511 of 2001 passed by the Chairman, M.A.C.T-cum-V Addl. District Judge (FTC), East Godavari District at Rajahmundry, (for short 'the Tribunal'), the 2nd respondent-APSRTC preferred the instant MACMA.

2) The factual matrix of the case is thus:

a) On 04.09.2000 at about 7.15 P.M, when the petitioner was travelling in a APSRTC bus bearing No.AP 9 Z 5729 from Tuni to Annavaram, after passing commercial check post, Velampeta, near Tuni the 1st respondent— driver drove the bus in a rash and negligent and at high speed, went to wrong side and grazed the opposite coming lorry with hay-load, due to which the right hand of the petitioner was hit by a stick causing fracture injury. Immediately he was shifted to Government General Hospital, Kakinada for treatment. It is averred that accident occurred due to rash and negligent driving by the 1st respondent. On these pleas, the claimant filed O.P.No.511 of 2001 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") and claimed Rs.1,00,000/- against Respondent Nos.1 and 2, who are driver and APSRTC.

b) The first respondent filed counter denying all the material averments and urged to put the claimant in strict proof. R1 contended that as per the statement recorded by the police, lorry driver was responsible for the accident.

c) The 2nd respondent—APSRTC filed counter denying all the material allegations made in the petition specifically with respect to the age, avocation and earning capacity of the claimant. R2 further contended that accident was occurred due to the fault of the petitioner himself and prays for dismissal of the petition.

d) During trial, PWs.1 to 3 were examined and Exs.A1 to A6 were

marked on behalf of claimant. RW1 was examined on behalf of respondents.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.51,400/- with costs and interest at 6% p.a under different heads.

Hence, the appeal by the APSRTC.

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

4) Heard arguments of Sri S.V.Ramana, learned counsel for the appellant/APSRTC and Sri N.Siva Reddy, learned counsel for respondent No.1/claimant. R2 is not a necessary party vide cause title.

5 a) Challenging the award fixing the liability on APSRTC, learned counsel for appellant/APSRTC firstly argued that the accident was occurred only due to the fault of lorry driver as lorry was loaded with hay projecting outside the body and a stick was tied to hay load which was also protruding outside and further, the lorry came on the wrong side and grazed the bus on its right side and thereby the stick hit the right hand of the claimant causing him fracture injury. Learned counsel argued that there was a contributory negligence on the part of claimant also inasmuch as he stretched his hand outside window of the bus and so in the entire episode lorry driver and claimant himself were responsible for the accident and there was no fault of the bus driver at all. He argued that Tribunal misread the facts and evidence and fixed the liability on the driver and APSRTC.

b) Secondly and alternatively, he argued that even assuming that as held by the Tribunal, the bus driver along with lorry driver contributed to the accident, it ought to have fixed only partial liability on the driver of the bus and APSRTC and remaining part on the lorry driver. Since the claimant has not added the driver, owner and insurer of the lorry, the Tribunal ought to have awarded compensation against APSRTC to the extent of fault of its driver only. Thus, learned counsel at the

first instance sought for allowing the appeal and dismissing the claim against APSRTC and alternatively prayed for fixing proportionate responsibility on the appellant.

6) In oppugnation, learned counsel for 1st respondent/claimant argued that the evidence of PWs.1 and 2 would clinchingly show that bus driver drove the bus in a rash and negligent manner and did not try to move away from the lorry coming with hay-load in the opposite direction so as to avert possible accident and therefore, the bus driver is also responsible for the accident along with the lorry driver. The claimant is a third party and he is not responsible for the accident in any manner. Therefore, under law he is entitled to claim compensation against either or both of the tort-feasors due to whose composite negligence the accident was occurred. Merely because the claimant has not added the owner and insurer of the lorry, compensation need not be reduced to that extent and the Tribunal rightly fixed the entire liability on the APSRTC and he thus prayed to dismiss the appeal.

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

“Whether the award of the Tribunal in fixing the liability on the APSRTC and its driver is legally correct?”

8 a) **POINT:** The admitted facts are that on 04.09.2000 at 7 PM, PW1 boarded RTC bus bearing No.AP 9 Z 5729 in Tuni along with N.Satyanarayana and two others to go to Annavaram and while the bus was proceeding towards Annavaram and after passing commercial check post, Velampeta near Tuni at about 7.15 PM, a lorry with hay-load came in opposite direction and grazed right side of the bus and thereby a stick which was tied to the hay-load protruding outside the lorry, hit the right hand of the claimant who was sitting in the rear side of the bus towards driver side. On appreciation of facts

and evidence the Tribunal observed that had the bus driver was a little bit cautious in driving the bus in leaving reasonable space while crossing opposite coming vehicle, as there was a possibility for him to observe the opposite coming lorry with hay stock, he would have avoided the accident. The Tribunal thus held that bus driver as well as lorry driver both are joint tort-feasors. Since the accident was occurred due to composite negligence of the two vehicle drivers, the claimant can claim entire compensation from all or any of the tort-feasors. In this regard, the Tribunal relied upon the decision reported in ***Bhanuven P.Joshi v. Kantilal B.Parmar***.

b) In the evidence of PW1—the claimant, he deposed that had the bus driver was a little bit cautious in driving the bus by leaving reasonable space while crossing the opposite coming vehicle and had he taken care and caution towards passengers, the accident would not have occurred. He denied the suggestion that accident was occurred due to his fault as he kept his hand out of the window of the bus.

c) PW1 who is the co-passenger also deposed in similar lines to the effect that the bus driver drove the vehicle in a rash and negligent manner and went towards its wrong side and grazed the opposite coming lorry which was loaded with hay. He denied the suggestion that he was deposing falsehood to help the claimant.

d) Thus, a perusal of evidence of PWs.1 and 2 would show that the bus driver on seeing the lorry coming with opposite side with hay did not swerve to further left, to avoid grazing with lorry. To that extent he was responsible for the accident.

d) No doubt, the bus driver (RW1) in his evidence deposed as if the lorry came in a rash and negligent manner on its wrong side and grazed his bus. He further stated at that time the petitioner protruded

his hand to the right side window and the stick which was fixed on the side of the lorry to cover the hay dashed his right hand. However, RW1 being an interested witness his evidence cannot be accepted without a corroboration from independent witnesses. The RTC has not examined any of the passengers to buttress the claim of RW1. So, when the entire facts and evidence are taken into consideration, it would reveal that lorry driver as well as bus driver both were responsible for the accident. It is needless to emphasize that due to their composite negligence the accident was occurred.

9) Now, the point is whether the claimant is entitled to seek for compensation against one of the tort-feasors. On this aspect we have a judgment of this High Court reported in ***Sombathina Ramu vs. T.Srinivasulu***.

a) In the said case learned Judge of this High 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.

b) 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 APSRTC and the respondents in OP have no right to question the action on the part of claimant.

10) In the result, I find no merit in the appeal and accordingly this MACMA is dismissed by confirming the award passed by the Tribunal in O.P.No.511 of 2001. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 05.06.2015

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

Murthy