

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.Nos.2697 & 2731 of 2004

COMMON JUDGMENT:

1 Since these two appeals arise out of the very same judgment and award dated 31.12.1998 passed in O.P.Nos.281 of 1989 and 2 of 1990 on the file of the Chairman, MACT-cum-District Judge, Vizianagaram, they are being disposed of by this common judgment.

2 For the sake of convenience, the parties to this appeal are hereinafter referred to as they were arrayed before the Tribunal.

3 The facts leading to the filing of the present appeal are briefly as follows:

4 On 10.11.1989, the petitioner in O.P.No.281 of 1989 and the petitioner in O.P.No.2 of 1990 along with another were proceeding on a motorcycle bearing No.AAV 659 from Nandigam to Bakkannapalem on National Highway. The petitioner in O.P.No.281 of 1989 was the rider and petitioner in O.P.No.2 of 1990 and petitioner in O.P.No.1 of 1990 who are his sisters, were pillion riders. When the motorcycle reached near Simmapeta village near Bhogapuram, at about 2.30 p.m, the driver of the lorry bearing No.AHH 3799 drove the same in a rash and negligent manner at high speed and hit the motorcycle in opposite direction. Due to the accident, the petitioners sustained grievous injuries on various parts of the body and took treatment in King George Hospital, Visakhapatnam from 10.11.1989 to 17.11.1989. The

petitioners spent huge amount towards medicines and treatment. Due to the accident, the petitioners in both the O.Ps could not attend work for a long time and thereby lost their income. Hence the petitioner in O.P.No.281 of 1989 sought compensation of Rs.53,000/- and the petitioner in O.P.No.2 of 1990 sought compensation of Rs.53,600/-. The lorry bearing No.AHH 3799, which belongs to the second respondent was insured with the third respondent by the date of accident. Hence all the respondents are jointly and severally liable to pay compensation to the petitioners.

5 Respondent Nos.1 and 2 in all the O.Ps remained ex parte. Third respondent filed a common counter denying the various allegations made in the petition, the manner of accident and also the nature of injuries sustained by the petitioners. At the time of accident, three persons were travelling on the motorcycle in violation of the provisions of the M.V. Act and Traffic Rules. The accident occurred due to the rash and negligent driving of the rider of the motorcycle and there was no negligence on the part of the driver of the lorry. The present petitions are not maintainable for non-impleading of owner and insurer of the motorcycle bearing No.AAV 659. The amount of compensation claimed by the petitioners under various heads is excessive and exorbitant. Therefore, the petitions are liable to be dismissed against this respondent.

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

- i. Whether the accident occurred due to rash and negligent driving of the accident vehicle, as alleged in the O.P?

ii. Whether R.1, R.2 and R.3 of any of them are liable to pay any compensation, interest and costs to the petitioner, and if so, to what amounts?

iii. To what relief?

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7 During the course of trial, on behalf of the petitioner P.Ws.1 to 3 were examined and Exs.A.1 to A.9 and Exs.X.1 and X.2 were marked. On behalf of the 3rd respondent no oral or documentary evidence was adduced.

8 On appreciation of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the rider of the motorcycle bearing No.AAV 659 i.e. petitioner in O.P.No.281 of 1989 and dismissed all the petitions.

9 Feeling aggrieved by the said judgment and award, the petitioners in O.P.No.281 of 1989 and O.P.No.2 of 1990 filed the present appeals.

10 The learned counsel for the petitioners, Sri Venkateswara Rao Gudapati, submitted that the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the rider of the motorcycle i.e. petitioner in O.P.No.281 of 1989 is not sustainable either on facts or on law. He further submitted that the Tribunal failed to consider that the petitioner in O.P.No.2 of 1990 is a third party to the accident and hence she is entitled to compensation. He further submitted that the Tribunal has not rightly considered the deposition of the first respondent (Ex.A.2) in C.C.No.19 of

1990.

11 Per contra, the learned counsel for the third respondent submitted that the petitioners have not taken any steps to register criminal case against the driver of the lorry, which itself indicates that the accident occurred due to the rash and negligent driving of the rider of the motorcycle i.e. petitioner in O.P.No.281 of 1989. He further submitted that the Tribunal has rightly discarded the Ex.A.2. He further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal.

12 Now the points that arise consideration in these appeals are

1) Whether the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AHH 3799, if so, whether the petitioners are entitled to any compensation?

2) Whether the Tribunal is justified in dismissing the claim petitions filed by the petitioners?

13 The following admitted facts can be culled out from the material available on record. On 10.11.1989, Venkata Ramana the petitioner in O.P.No.281 of 1989 along with his two sisters i.e. petitioners in O.P.Nos.1 and 2 of 1990 was proceeding from Nandigama to Bakkannapalem on a motorcycle bearing No.AAV 659. When the motorcycle reached Simmapeta village near Bhogapuram, at about 2.30 p.m, the accident occurred. In connection with the said accident, the first respondent being the driver of the lorry bearing No.AHH 3799 lodged a complaint to the Station

House Officer, Bhogapuram, who in turn registered a case in Cr.No.152 of 1989 against the petitioner in O.P.No.281 of 1989. After completion of investigation the investigating officer laid charge sheet against the petitioner under Sections 337 and 338 of IPC. The learned Judicial Magistrate of I Class, Vizianagaram has taken cognizance of the offences against the petitioner under Sections 337 and 338 IPC and numbered the charge sheet as C.C.No.19 of 1990. The claimants in O.P.Nos.1 and 2 of 1990 who are the own sisters of the petitioner in O.P.No.281 of 1989 were examined as P.Ws.2 and 3 in the said C.C.No.19 of 1990. For the reasons best known to them, they turned hostile. Therefore, after full fledged trial, the petitioner in O.P.No.281 of 1989 was acquitted of the said offences in that criminal case.

14 As rightly observed by the Tribunal, the petitioner in O.P.No.281 of 1989 is a business man by profession. The petitioners / appellants have not taken any steps to lodge a complaint against the driver of the lorry i.e. first respondent. If really the accident occurred due to the rash and negligent driving of the lorry by the first respondent, what prevented the petitioners to lodge a complaint against him? On the other hand, the petitioners failed to explain why the police have registered criminal case against the petitioner in O.P.No.281 of 1989. This particular aspect was considered by the Tribunal in right perspective in order to ascertain at whose fault the accident had occurred.

15 The learned counsel for the petitioners have taken a specific plea before the Tribunal that the judgment of the

criminal Court is not binding on the Tribunal. I am fully agreeing with the proportion of law advanced by the learned counsel for the appellant. The petitioners have placed much reliance on the testimony of P.W.4 in C.C.No.19 of 1990. The contention of the petitioners is that the driver of the lorry himself admitted before the Criminal court that the accident occurred due to his own negligence only. It is a well settled principle of law that deposition of a witness in a previous case can be used either for the purpose of corroboration or contradiction as postulated under section 145 of the Indian Evidence Act. For one reason or the other, the petitioners have not chosen to examine the first respondent i.e. driver of the lorry in order to establish the stand taken by them. In the absence of examination of the first respondent, the Court cannot place much reliance on his deposition in the previous matter, more particularly, on deposition in a criminal case. If this Court accepts the contention of the learned counsel for the petitioners that the judgment of the Criminal Court is not binding on the Tribunal, equally, the deposition recorded in the criminal case is also not binding on it.

16 The petitioners have not assigned reasons much less cogent and valid reasons for non-examination of the first respondent to substantiate their stand. The interesting aspect of this case is that the Station House Officer, Bhogapuram police station registered a criminal case against the petitioner in O.P.No.281 of 1989 basing on the complaint lodged by the first respondent. This Court is unable to understand how the

de facto complainant was examined as P.W.4 in the criminal case. Even if the de-facto complainant entered into the witness box as P.W.4 and admitted that the accident occurred due to his own negligence, this itself clearly indicates that the first respondent has given one version in the FIR and deposed contrary to the contents of the FIR before the criminal Court. For obvious reasons the first respondent has not stick on to one version. Basing on the material available on record, this Court can safely arrive at a conclusion that the first respondent who was examined as P.W.4 in C.C.No.19 of 1990 is not a trustworthy witness. Viewed from that angle also, much reliance cannot be placed on Ex.A.2 i.e. deposition of the first respondent in C.C.No.19 of 1990.

17 Establishment of rashness and negligence on the part of the driver of the crime vehicle is *sine qua non* for allowing of claim petitions filed under Section 166 of the Motor Vehicles Act. In the instant case, the police have not registered criminal case against the first respondent. The petitioners herein also did not take steps either to lodge a complaint to the police or to file a complaint before the criminal court as contemplated under the provisions of the Cr.P.C to substantiate their stand. Inaction on the part of the claimants to take appropriate steps in this direction also creates any amount of doubt with regard to the version put forth by the petitioners.

18 The possibility of deposing false by P.Ws.1 to 3 in order to claim compensation from the third respondent cannot be ruled out completely. If the Courts or the Tribunals place

reliance on the testimony of this type of witnesses, certainly, it would amount to miscarriage of justice. The Tribunal has taken much pains and scrutinised the testimony of the witnesses in order to ascertain the truthfulness or otherwise of the version put forth by the petitioners. The Tribunal has assigned cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the Tribunal so far as the manner of accident is concerned. Basing on the material available on record, I am of the considered view that there was no rashness or negligence on the part of the first respondent to cause the accident. In such circumstances, the respondent Nos.2 and 3 are also not liable to pay compensation.

19 Hence there are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal. The appeals lack merits and bonafides. Accordingly, these two appeals are dismissed. Consequently, miscellaneous petition if any pending in these miscellaneous appeals shall stand closed. No order as to costs.

T. SUNIL CHOWDARY, J

Date: 25th June 2015
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