

**THE HON'BLE SMT JUSTICE ANIS**  
**CIVIL MISCELLANEOUS APPEAL No.2745 of 2004**

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**JUDGMENT**  
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The Andhra Pradesh State Road Transport Corporation filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order dated 22.03.2004, passed in O.P.No.1053 of 1999 by the learned II Additional Chief Judge, City Civil Court, Hyderabad.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

3. The petitioner filed O.P.No.1053 of 1999 under Section 166 of the Act claiming compensation of Rs.6,00,000/- for the injuries sustained by him in a motor vehicle accident.

4. The brief averments made in the petition are that on 06.06.1999, while the petitioner along with his companion was returning to Hyderabad from Choutuppal on a car bearing No.AP 28L 3555 and when it reached near Hayatnagar Radio Station, one APSRTC bus bearing No.AP 10Z 3544, driven by its driver in a rash and negligent manner at high speed and dashed against the right side of the car, as a result, the petitioner and his companion, who was driving the car, received injuries and they were shifted to Kamineni Hospital, where they were treated as inpatients. The petitioner stated that his right leg was operated on 15.06.1999 by a team of doctors and a steel rod was inserted in his right leg and he became permanently disabled. The petitioner stated that he was doing real estate business and also a Document Writer at Hayatnagar Sub-Registrar Office, earning Rs.8,000/-per month and he was an income

tax assessee. Due to the accident, he is unable to attend his work and suffered mentally and financially, as such, he prayed the Court to grant compensation against both the respondents.

5. The second respondent Corporation filed counter stating that the petitioner has to prove the manner of accident, his age and income at the time of accident. It denied the rash and negligent driving of the driver of bus i.e., first respondent. It is stated that the bus was going on its correct side towards Nalgonda and when it reached Hayatnagar, a Maruti car bearing No.AP 28L 3555 came in opposite direction with high speed, due to which, the accident occurred. It is also stated that the driver of the car was in the state of intoxication and as such, the second respondent is not liable to pay any compensation to the petitioner and prayed the Court to dismiss the petition.

6. The first respondent filed a memo adopting the counter filed by the second respondent.

7. Basing on the above pleadings, the Tribunal framed the following issues;

1. Whether the petitioner received injuries in the accident on account of rash and negligent driving of the car bearing No.AP 28L 3555, by its driver?

2. Whether the petitioner is entitled to any compensation? And if so, to what amount and from whom?

3. To what relief?

8. On behalf of the petitioner, P.Ws.1 to 4 were examined and Exs.A1 to A10 were marked. On behalf of the respondents, the first respondent was examined as R.W.1, but no document was marked.

9. The Tribunal, after considering the evidence on record, held that the accident occurred due to rash and negligent driving of the

driver of bus and granted compensation of Rs.1,46,500/- along with interest at 9% per annum to the petitioner for the injuries sustained by him in the accident. Aggrieved by the award passed by the Tribunal, the second respondent filed the present appeal.

10. Learned counsel for the appellant argued that P.W.4, who drove the car in a rash and negligent manner, was alone responsible for causing the accident and initially, R.W.1, the driver of the bus, gave a complaint to the police and the same was registered under Ex.A1 and after investigation, the Investigating Officer filed the charge sheet against P.W.4, and therefore, the appellant Corporation is not liable to pay any compensation to the petitioner and the Tribunal without considering these facts, awarded compensation. He further submits that the evidence of P.W.3-Doctor is silent with regard to the requirement of future operation by the petitioner and non-issuance of any certificate to that effect and finally, he prayed the Court to allow the appeal.

11. On the other hand, learned counsel for the second respondent/petitioner argued that the petitioner is a third party to both the vehicles as he was travelling in a Maruthi Car bearing No.AP 28L 3555 from Choutuppal to Hyderabad and immediately after the accident, the petitioner was hospitalised for a considerable period, as such, he gave a complaint- Ex.A6 on 26.07.1999 with one month delay and the police, without considering his complaint, filed the charge sheet in the month of August, 1999. He further argued that there is a composite negligence on the part of the drivers of both the vehicles, as such, the petitioner can sue any one of the drivers of the vehicles. In support of his contention, he relied upon the decision of this Court in **SOMBATHINA RAMU v. T. SRINIVASULU**<sup>[1]</sup> wherein it was held as under;

“When a person is injured without his playing directly or indirectly any role or without any negligence on his part, but yet as a result of negligence on the part of another person or due to the negligence of two or more persons, then in such a case, it cannot be construed as a case of contributory negligence. The theory of contributory negligence therefore, requires and recognizes the role played by the injured either directly or even remotely in the occasion of the accident which caused the injury. Therefore, without there being any part or role played in the accident in question, a third party cannot be described as a contributor or causative factor for the injury. In all such cases, the injury is said to have occasioned wholly due to the composite negligence of others. In a case of composite negligence, the person who has been wronged has a choice of initiating proceedings against all or any one of more than one of the wrongdoers. Every wrong-doer becomes liable for the whole of the damage that has been caused or meted out. The concept of composite negligence has been explained in the following manner:

“Where negligent acts of two or more independent persons have between them caused damage to a third, the sufferer is not driven to apply any such analysis to find out whom he can sue. He is entitled of course, within the limits set out by the general rules as to remoteness of damage to sue all or any one of the negligent persons. It is no concern of his whether there is any duty of contribution or indemnity as between these persons though in any case he cannot recover in the whole more than his whole damage”.

A similar question arose before a Division Bench of this Court in a case reported in *Manjula Devi Bhuta v. Manusri Raha*, 1968 ACJ 1 (MP)

Where a person is injured without any negligence on his part but as a combined effect of the negligence of two other persons, it is not a case of contributory negligence but is a case of what is styled as ‘composite negligence’. If due to the negligence of ‘A and B’, ‘Z’ has been injured, ‘Z’ can sue both ‘A’ and ‘B’ for the whole damage. There is a clear distinction between contributory negligence and what is termed as ‘composite negligence’. The term ‘composite negligence’ applies solely to the conduct of a plaintiff. It means that there has been an act of omission on his part, which has materially contributed to the damage.

In a suit for ‘composite negligence’ the plaintiff is not bound to a strict analysis of the proximate or immediate cause of

the event to find out whom he can sue. Subject to the rules as to remoteness of damage, he is entitled to sue all or any of the negligent persons and it is no concern of his whether there is any duty of contribution or indemnity as between those persons, though in any case he cannot recover on the whole more than his whole damage. He has a right to recover the full amount of damages from any of the defendants.

In assessing damages against joint tortfeasors one set of damages will be fixed, and they must be assessed according to the aggregate amount of injury resulting from the common act. The damages cannot be apportioned so as to award one sum against one defendant and another against the other defendant, though they may have been guilty in unequal degree. If two omnibuses are racing and one of them runs over a man who is crossing the road and has no time to get out of the way, the injured person has a remedy against the proprietor of either omnibus.

Those who are sued cannot insist on having the others joined as defendants. The mere omission to sue some of them will not disentitle the plaintiff from claiming full relief against those who are sued”.

Learned counsel further contended that in view of the settled principles of law enunciated by this Court, the petitioner is entitled to claim compensation from both the drivers of vehicles or from one driver of the vehicle and that the Tribunal, after considering the oral and documentary evidence, has rightly awarded compensation and the said findings need not be interfered with by this Court and prayed this Court to dismissed the appeal.

12. The point for consideration is whether the impugned order is liable to be set aside or not ?

13. **Point:**

A perusal of the evidence produced by both sides, there is no dispute that on 6.06.1999, the accident occurred between two vehicles i.e., APSRTC bus bearing No.AP 10Z 3544 driven by R.W.1 and car bearing No.AP 28L 3555 driven by P.W.4, wherein the

petitioner travelled and received grievous injuries. Therefore, it has to be seen whether the petitioner is entitled to file a petition claiming compensation against the APSRTC or he can sue the insurance company of the car in which he travelled. In view of the settled principles of law enunciated in the decision cited (1) supra, this Court categorically held as under;

“In a suit for ‘composite negligence’ the plaintiff is not bound to a strict analysis of the proximate or immediate cause of the event to find out whom he can sue. Subject to the rules as to remoteness of damage, he is entitled to sue all or any of the negligent persons and it is no concern of his whether there is any duty of contribution or indemnity as between those persons, though in any case he cannot recover on the whole more than his whole damage. He has a right to recover the full amount of damages from any of the defendants.

Therefore, the contention of the appellant’s counsel that the appellant is not entitled to pay compensation cannot be accepted in view of the composite negligence on the part of the drivers of both the vehicles and the petitioner-injured travelled in one of the vehicles.

14. The Tribunal, after considering the evidence of P.W.3 and Ex.A5 held that the petitioner sustained multiple abrasions over left side of chest and swelling over right thigh lateral aspect and also sustained fracture of femur lower commuted and it awarded a sum of Rs.21,500/-for the injuries. To disprove the evidence of P.W.3 and Ex.A5, the appellant/second respondent has not produced any evidence much less documentary evidence. Therefore, the Tribunal, after considering the evidence on record, granted a reasonable compensation for the injuries sustained by the petitioner. The appellant also has not filed any evidence to show that the Tribunal has committed error in granting compensation towards pain and

suffering; towards medical bills and also towards loss of future income. The Tribunal, after considering the evidence on record, has rightly awarded compensation of Rs.1,46,500/- to the petitioner and the said finding needs no interference by this Court. The petitioner is entitled to file a petition against the APSRTC or the owner, driver and insurer of the car bearing No.AP 28L 3555 in view of the composite negligence.

15. Learned counsel for the appellant argued that the Tribunal awarded interest at 9% p.a on the compensation amount and therefore, it has to be reduced in view of the settled laws reported in ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***<sup>[2]</sup>, wherein the Hon'ble Supreme Court awarded interest @ 7.5% p.a., and in ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***<sup>[3]</sup>, wherein the Hon'ble Supreme Court awarded interest at 7% p.a.

16. Thus, in view of the different rate of interests granted by the Apex Court in the judgments cited (2) & (3) supra, I am of the considered view that the rate of interest awarded by the Tribunal is excessive and therefore, it is a fit case to reduce the rate of interest from 9% to 7.5% p.a.

17. In the result, the Appeal is allowed in part, reducing the rate of interest from 9% to 7.5% p.a on the compensation awarded by the Tribunal from the date of petition till the date of realisation. So far as the quantum of compensation awarded by the Tribunal is concerned, there is no need to interfere with by this Court and therefore, it is unaltered. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

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**ANIS, J**

22<sup>nd</sup> June, 2015

sj

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[\[1\]](#) 2008(3) ALD 362

[\[2\]](#) MANU/SC/1005/2013

[\[3\]](#) 2012 ACJ 2328