

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.Nos.1645 of 2006 and 3920 of 2008

COMMON JUDGMENT:

M.A.C.M.A.No.1645 of 2006 is filed by the claimants, whereas M.A.C.M.A.No.3920 of 2008 is filed by the insurance company under Section 173 of Motor Vehicles Act challenging the judgment and award, dated 21.04.2006 passed in M.V.O.P.No.459 of 2005 on the file of the Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, Karimnagar.

2. The parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal to avoid confusion.

3. The facts leading to filing of the appeal, in brief, are as follows:

On 15.11.2004, the petitioner along with her brother proceeding to Machupeta from Akkepalli village on a motor cycle bearing No.AP-25-D-5045, when they reached the outskirts of Rajapur village, the rider of the motor cycle hit the stationed lorry bearing No.ATR – 6027. The accident occurred due to the rash and negligent parking of the lorry by its driver. The Station House Officer, Mutharam, registered a case in Crime No.96 of 2004 under Sections 307-A and 337 IPC against the driver of the lorry. Due to the accident, the petitioner sustained fracture to skull base frontal bone, supra orbit and other parts of the body. The petitioner took treatment as inpatient in Prathima Institute, Karimnagar and MGM Hospital, Warangal and spent an amount of Rs.80,000/- towards medicines and treatment. Due to fractures, the petitioner incurred disability. By the time of accident, the petitioner was aged about 33 years and used to earn Rs.5,000/- per month as vegetable vendor. The petitioner lost her income due to permanent disability. The first respondent is the driver of the lorry. The lorry bearing No.ATR – 6027 which belongs to the second respondent was insured with the third respondent company with effect from 09.04.2004 to 08.04.2005. Therefore, respondents 1 to 3 are jointly and severally liable to pay the compensation to the petitioner.

4. The respondents 1 and 2 remained *ex parte*. The third respondent filed counter denying all the material averments made in the petition *inter alia* contending that the accident was occurred due to rash and negligent driving of the rider of the motor cycle bearing No. AP-25-T-5045. This respondent is not liable to pay the compensation to the petitioner unless the petitioner establishes that the driver of the lorry was having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant and prayed to dismiss the petition.

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

1. Whether the accident had occurred due to rash and negligent driving of the vehicle, i.e. auto (*sic*, lorry) bearing Number ART 6027 by its driver?
2. Whether the petitioner is entitled to recover compensation and if so to what amount and from whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioner, PWs.1 to 5 were examined and Exs.A.1 to A.16 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Ex.B1 was marked.

7. After analysing the oral and documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent act of the driver of the lorry, which resulted injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.1,97,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, directing the respondent Nos.1 to 3 to deposit the amount.

8. Heard Sri G.Madhusudhan Reddy, the learned counsel for the claimant and Sri R.Sridhar, learned counsel for the third respondent. Respondents 1 and 2 remained *ex parte*.

9. The contention of the learned counsel for the petitioner is two fold. The Tribunal

discarded Ex.A11 on flimsy grounds. He further submitted that the Tribunal has not rightly considered the income of the petitioner and awarded meagre amount of compensation.

10. Per contra, learned counsel for the third respondent submitted that the finding of the Tribunal that the accident occurred due to the negligent act of the driver of the lorry is not sustainable either on facts or on law. He further submitted that the amount of compensation awarded by the Tribunal is on higher side.

11. Now the points that arise for consideration in these appeals are as follows:

1. Whether there was no negligence on the part of the driver of the lorry to cause the accident?
2. Whether the Tribunal has awarded just and reasonable compensation or not?

12. **Point No.1:** As seen from the testimony of P.W.1, on the date of accident herself and her brother were proceeding to their native place Machupeta from Akkepalli village on a motor cycle, she was a pillion rider on the motor cycle and her brother drove the motor cycle. As per the testimony of P.W.1, the driver of the lorry bearing No.ATR – 6027 parked the same on the middle of the road without parking lights. A perusal of the record reveals that the police registered a criminal case against the driver of the lorry (Ex.A1). As per the recitals of Ex.A2 the charge sheet, the accident occurred due to the rash and negligent act of the driver of the lorry. Admittedly, R.W.2 is not an eye witness to the accident. R.W.1 is none other than the driver of the lorry. As per the testimony of R.W.1, he stationed the lorry at the outskirts of Rajpur village with parking lights. In the cross-examination, he categorically deposed the criminal case registered against him is pending on the file of Judicial Magistrate of First Class, Manthena. In such circumstances, the possibility of distortion of facts by R.W.1 cannot be ruled out completely. The oral testimony of P.W.1 is supported by recitals of Exs.A1 and A2, whereas, the oral testimony of R.W.1 is not supported by any documentary evidence. The fact remains that by the time of accident, the petitioner was only a pillion rider on the motor cycle. The petitioner is no way responsible to cause the accident. Even assuming, but not conceding, that there was some negligence on the part of the rider of the motor cycle and the driver of the lorry, it is only a composite negligence. In order to resolve this 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, explaining composite and contributory negligence, 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.”

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 tort feors and claim damages from them, because, he himself is not responsible for the accident. It is well know that the victim of an action by joint tort-feors can proceed against any or all of the joint tort feors and if one of the joint tort feors feels that he is not liable and the other joint torn feor should be made liable, his remedy is only to proceed against the other tort feor 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:

“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.”

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.”

5. The Hon’ble Apex Court in in **Pawan Kumar and another. ETC. v. Harkishan Dass Mohan Lal**, reiterated the principle enunciated in the cases cited in **T.O.Anthony** case and **A.P.S.R.T.C.** case 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.”

13. In view of the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the question of contributory negligence on the part of the petitioner does not arise. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.ATR 6027. Accordingly, this point is answered in favour of the petitioner-claimant.

Point No.2:

14. A perusal of the record reveals that the Tribunal awarded the amounts under the following heads:

Rs.

1. Pain and suffering : 40,000
2. Medical expenditure : 68,513
3. Treatment for teeth : 25,000
4. Treatment for future headache : 3,000

- 5. Future treatment of teeth : 10,000
- 6. Loss of amenities due to loss of teeth : 10,000
- 7. Loss of earnings : 18,000
- 8. Loss of amenities due to loss of eye-sight: 30,000

Total : 2,04,513

Learned counsel for the petitioner submitted that the Tribunal has not awarded just and reasonable amount towards disability. As per the oral testimony of P.W.5, the petitioner incurred 40% disability. I have carefully perused Ex.A11 disability certificate issued by P.W.5. It is not mentioned in Ex.A11 that the petitioner incurred 40% disability in respect of a particular limb of the body of the petitioner. It is simply mentioned that the petitioner incurred 40% disability without specifying the reasons for the disability. If the testimony of P.W.5 is taken into consideration, the petitioner incurred disability due to the loss of eye sight. P.W.5 is a Civil Surgeon. It is a known fact that an Ophthalmologist is competent person to speak about loss of eye vision. I have carefully perused various documents filed by the petitioner in order to ascertain whether the petitioner has sustained injury to eye. In none of the medical reports, it is mentioned that the petitioner sustained injury to eye. This court is unable to understand how the petitioner lost eye vision to certain extent without sustaining injury to eye in the said accident. If really the petitioner sustained injury to right eye, the same might have been mentioned in the wound certificate. All these aspects create any amount of doubt with regard to genuineness of Ex.A11 disability certificate. If the Tribunal or court places reliance on this type of disability certificates, it may cause untold financial loss to insurance companies, which are dealing with public money. Taking these aspects into consideration, the Tribunal rightly not placed reliance on Ex.A11 disability certificate. However, taking into consideration the condition of the petitioner, the Tribunal awarded an amount of Rs.30,000/- towards loss of amenities due to loss of eye sight.

15. The fact remains that the petitioner sustained fractures on various parts of the body. A perusal of the record clearly reveals that the Tribunal has considered each and every fracture and injury sustained by the petitioner and awarded just and reasonable compensation. The compensation awarded by the Tribunal is not too

meagre as contended by the learned counsel for the claimant or too high as contended by the learned standing counsel for the insurance company. It is the duty of the Tribunal to award just and reasonable compensation basing on the facts and circumstances of each case. As observed earlier, the Tribunal minutely considered each and every aspect and awarded just and reasonable compensation. There are no grounds much less valid grounds to set aside or modify the findings recorded by the Tribunal so far as the quantum of compensation is concerned.

16. There is an arithmetical mistake committed by the Tribunal in calculating total compensation. As per the judgment and award of the Tribunal, an amount of Rs.1,97,000/- was awarded towards compensation. But as per the calculation in para-14 of this judgment, the total of amounts awarded by the Tribunal under various heads comes to Rs.2,04,513/-. Therefore, it is hereby clarified that the actual amount of compensation for which the petitioner is entitled to is Rs.2,04,513/- as awarded by the Tribunal. Accordingly, this point is answered.

17. In the result, M.A.C.M.A.No.1645 of 2006 filed by the claimants is partly allowed by awarding an amount of Rs.2,04,513/- instead of Rs.1,97,000/-. The respondent Nos.1 to 3 shall jointly and severally pay the same with proportionate costs and interest at 7.5% per annum from the date of petition till the date of deposit, which shall be paid within a period of two months from the date of receipt of a copy of this judgment. Consequently, M.A.C.M.A.No.3920 of 2008 filed by the insurance company is dismissed without costs. Miscellaneous petitions, if any pending in these appeals, shall stand closed.

T.SUNIL CHOWDARY, J

8th April, 2015

Rns/YS