

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1120 of 2009

JUDGMENT:

1 This appeal is filed challenging the award and judgment dated 29.04.2008 passed in M.V.O.P.No.373 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District & Sessions Judge (FTC), Ongole wherein and whereby an amount of Rs.1,88,000/- was awarded as compensation as against the claim of Rs.2.00 lakh, the second respondent – insurance company filed the present appeal.

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

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

4 On 20.05.2007 at about 12.30 a.m, one Maddu Bhaskara Rao and others were proceeding to Parchur in a Jeep bearing No.AP-03-7538 after attending a musical programme at Edubandu village. When the Jeep reached electricity office between Timmarajupalem and Devarapalli on Chilakaluripet – Parchur road, the driver of the lorry bearing No.AP-07-U-8840 (hereinafter referred to as 'the crime vehicle') had driven the same in a rash and negligent manner and hit the Jeep in which Bhaska Rao and others were travelling causing instantaneous death of Bhaskara Rao (hereinafter referred to as 'the deceased') and injuries to some other inmates of the Jeep. In connection with the said accident, a case in Cr.No.36 of 2007 was registered against the driver of the crime vehicle for the offences under sections 337 and 304-A of IPC. By the date of accident, the deceased was aged 45 years and used to earn Rs.5,000/- p.m. as musical artist. The first petitioner is wife, petitioner Nos.2 and 3 are her children, 4th petitioner is another wife and petitioner Nos.5 and 6 are her children, who are dependants on the income of the deceased. The crime vehicle which belongs to the first respondent was insured with the second respondent as on the date of accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioners.

5 First respondent filed written statement denying the material averments made in the petition, inter *alia* contending that the driver of the Jeep had driven the

same in a rash and negligent manner and hit a stationed tractor and thereafter dashed against the crime vehicle. The accident occurred due to the rash and negligent driving of the driver of the Jeep and there was no negligence on the part of the driver of the crime vehicle. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

6 Second respondent filed counter denying the material averments made in the petition, inter *alia* contending that the accident occurred due to head on collision of both the vehicles and hence the present petition is not maintainable for non-impleading of the driver, owner and insurer of the Jeep. The accident occurred due to the negligence on the part of the driver of the Jeep only. The driver of the lorry was not having valid and effective driving licence as on the date of accident. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

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

- i. Whether on 20.05.2007 at about 12.30 AM near Devarapalli Electricity office, the driver of the lorry bearing No.AP 07 U 8840 drove his vehicle in a rash and negligent manner and thereby caused the accident resulting in the death of the deceased Maddu Bhaskara Rao?
- ii. Whether the petitioners are entitled to any compensation. If so, to what amount and from whom?
- iii. To what relief?

8 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the first respondent R.W.1 was examined. On behalf of second respondent R.W.2 was examined and Exs.B.1 to B.4 were marked.

9 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 driver of the lorry bearing No.AP-07-U-8840 which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.1,88,000/- with interest at 9% p.a from the date of filing of the petition till the date of deposit and directed the

respondent Nos.1 and 2 to deposit the same jointly and severally. Hence the present appeal.

10 Heard Sri Naresh Byrapaneni, the learned counsel for the second respondent and Sri B. Parameswara Rao, the learned counsel for the petitioners.

11 The contention of the learned counsel for the second respondent is two fold.

i) The Tribunal failed to consider the fact that the accident occurred due to the rash and negligence on the part of the driver of the Jeep.

ii) The finding of the Tribunal that the accident occurred due to the rash and negligence on the part of the driver of the crime vehicle is not supported by any material.

12 *Per contra*, the learned counsel for the petitioners submitted that the Tribunal has rightly considered the oral and documentary evidence available on record and arrived at a just conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry. He further submitted that there are no grounds to interfere with the well considered judgment and award passed by the Tribunal.

13 Now the point that falls for consideration in this appeal is:

“Whether the Tribunal is justified in holding that the accident occurred due to the rash and negligent driving of the driver of the lorry only?”

Point:

14 The Tribunal awarded an amount of Rs.1,88,000/- as compensation to the petitioners under various heads. The petitioners have not preferred any appeal or cross objections challenging the quantum of compensation awarded by the Tribunal. The learned counsel for the second respondent, in all fairness, submitted that the second respondent is not disputing the quantum of compensation awarded by the Tribunal. In view of the submissions made by the learned counsel for the second respondent, I am not inclined to delve into the aspect of quantum of compensation awarded by the Tribunal.

15 To prove the negligence on the part of the driver of the crime vehicle, the first petitioner herself examined as P.W.1 and got marked Exs.A.1 to A.5.

P.W.2 is an eyewitness to the accident. To dislodge the case of the petitioners, the driver of the lorry was examined himself as R.W.1. R.W.2 is Senior Assistant in the office of the second respondent – insurance company. A perusal of the record reveals that P.W.1 who is the wife of the deceased and R.W.2 who is an employee in the office of the second respondent are not eyewitnesses to the accident. Therefore, their testimony is not much helpful to prove the negligence on the part of the drivers of both the vehicles.

16 As seen from the testimony of P.W.2, on the date of accident he was travelling in the Jeep along with the deceased and others. As per the testimony of P.W.2, the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. In the cross-examination of P.W.2, nothing is elicited in support of the version put forth by the respondent Nos.1 and 2. As per the testimony of R.W.1, the driver of the Jeep had driven the same in a rash and negligent manner and hit a stationed tractor in the first instance and thereafter hit the crime vehicle. No suggestion was put to P.W.2 that the driver of the Jeep, at the first instance, hit the tractor and thereafter the crime vehicle. If really the version put forth by the second respondent is true and correct, what prevented them to elicit the same through P.W.2, who is an eyewitness to the accident? Similarly, if really the accident had occurred as narrated by R.W.1, what prevented him to lodge a complaint against the driver of the Jeep immediately after the accident? A perusal of Ex.B.4 - rough sketch clearly reveals that immediately after the accident, the Jeep went into nearby fields. From a perusal of Ex.B.4 it is manifest that the Jeep did not hit stationed tractor before it hit the crime vehicle as deposed by R.W.1. The recitals of Ex.B.4 fully support the version put forth by the petitioners. As per the recitals of Ex.A.1- FIR and Ex.A.5-charge sheet, the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. As per Ex.A.4 - Motor Vehicles Inspector's report, there was no mechanical defect in the lorry. A perusal of Ex.A.2-Inquest Panchanama and Ex.A.3- Post-mortem report, it is clearly manifest that the deceased died due to the injuries sustained in the road accident.

17 In order to get acquittal in the criminal case registered against R.W.1, the possibility of distortion of facts cannot be ruled out completely. Filing of the charge sheet against R.W.1 also lends support to the version of the petitioners.

The oral testimony of P.Ws.1 and 2 is supported by Exs.A.1 to A.5 and Ex.B.4-rough sketch. The oral testimony of R.W.1 is not supported by any documentary evidence. The oral testimony of P.W.2 is cogent and convincing moreover inspires the confidence of the Court. There are no grounds much less valid grounds to discard the testimony of P.W.2. The Tribunal had rightly considered the oral and documentary evidence and arrived at a right conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry i.e. R.W.1 which resulted in the death of the deceased. I see no justifiable grounds to upset the findings recorded by the Tribunal on issue No.1. Therefore, I am fully agreeing with the findings of the Tribunal on issue No.1.

18 It is not the case of the second respondent that the deceased either directly or indirectly contributed to cause the accident. In case of head on collision of two vehicles, the claimants are entitled to file petition against any one of the joint tort feasures. Viewed from that angle also, the stand taken by the second respondent is not sustainable. Therefore, the appeal lacks merits and bonafides.

19 In the result, the appeal is dismissed. Parties are directed to bear their own costs in this appeal. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date:9th April, 2015.

Kvsn