

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1005 of 2009

JUDGMENT:

1 This appeal is filed challenging the judgment and award dated 26.11.2008 passed in M.V.O.P.No.62 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District & Sessions Judge Kadapa wherein and whereby an amount of Rs.4,40,000/- was awarded as compensation as against the claim of Rs.6.00 lakhs, 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 18.02.2005 at about 4.00 a.m, one Duddela Subba Reddy engaged a lorry bearing No.AP-02-U-8592 for transportation of sweet lemons from Nagireddypalli village of Anantapur district to Hyderabad. At the directions of the driver of the lorry, Subba Reddy was sleeping on the load of the lorry. When the lorry reached near Sankala Maddi village on N.H.7, the driver of the lorry, while overtaking another lorry, had driven the crime vehicle in a rash and negligent manner and applied sudden brakes. In that process, Subba Reddy (hereinafter referred to as 'the deceased') fell down from the lorry and died on the spot. In connection with the said accident, a case in Cr.No.15 of 2005 was registered against the driver of the crime vehicle for the offences under sections 337 and 304-A of IPC by the Station House Officer Addakal police station. By the date of accident, the deceased was aged 50 years and used to earn Rs.1,20,000/- p.a. The petitioners are dependants on the income of the deceased. Hence the petitioners filed the petition seeking compensation of Rs.6.00 lakhs. 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 remained *ex parte*. Second respondent filed written statement denying the material averments made in the petition, *inter alia*

contending that the accident occurred due to the negligence of the deceased himself 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 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the deceased Duddela Subbareddy died in a motor accident on 18.2.2005 at about 4.00 p.m. due to rash and negligent driving of the vehicle bearing No.AP -02-U-8592 by its driver?
- ii. Whether the petitioners are entitled to the compensation as prayed?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.7 were marked. On behalf of the second respondent R.W.1 was examined but no document was marked.

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 driver of the lorry bearing No.AP-02-U-8592 which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.4,40,000/- with interest at 7.5% 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. Feeling aggrieved by the said judgment and award of the Tribunal, the second respondent – insurer of the lorry preferred the present appeal.

9 Heard Sri Naresh Byrapaneni, the learned counsel for the second respondent and Sri Srinivas Karra, the learned counsel for the petitioners.

10 The learned counsel for the second respondent submitted that at the time of accident the deceased was travelling in the vehicle as unauthorised passenger. He further submitted that the Tribunal failed to consider the fact that the deceased was also equally responsible for his untimely death.

11 *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.

12 Now the points that fall for consideration in this appeal are:

1. "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 or whether there was any negligence on the part of the deceased?
2. Whether the Tribunal has awarded just and reasonable compensation."

Point No.1:

13 The testimony of P.W.1 is no way helpful to prove the negligence if any on the part of the driver of the crime vehicle as she is not an eyewitness to the accident. The oral testimony of P.W.2, who is an eyewitness to the accident, coupled with Exs.A.1 and A.2 clinchingly establishes that the deceased was sleeping on the load in the body of the lorry at the time of unfortunate incident. The fact remains that on the date of accident, the deceased and P.W.2 were travelling in the lorry along with sweet lemon in order to sell the same in Hyderabad. P.W.2 was travelling in the cabin of the lorry at the relevant point of time. Absolutely there is no evidence on record to show that there is no place for the deceased to travel in the cabin of the lorry. The petitioners have taken a specific plea in the petition that at the instructions of the driver of the lorry, the deceased went into the body of the lorry. The possibility of taking this type of plea by the claimants in order to cover up the laches on the part of the deceased cannot be ruled out. The material placed before the Tribunal falls short to establish that the deceased was forced to sleep on the load in the body of the lorry at the instructions of the driver of the lorry. The learned counsel for the second respondent strenuously submitted that if a person travels in the body of the lorry, he will be treated as an unauthorised passenger. To substantiate the argument he has drawn my attention to Rule 252 of the A.P. Motor Vehicles Rules, which reads as follows:

252. Carrying of persons in goods vehicle carriage:- (1)
No person shall be carried in the cab of a goods vehicle

beyond the number for which there is seating accommodation at the rate of 284 millimetres measured along the seat, excluding the space reserved for the driver for each person more than (Seven person in all) shall be carried in any goods vehicle.

(2) No person shall be carried in a goods vehicle upon the goods or otherwise in such a manner that such person is in danger of falling from the vehicle and in no case shall any person be carried in a goods vehicle, in such a manner that any part of his person when he is in sitting position is at a height exceeding 3 metres from the surface upon which the vehicle rests.

(3) No person other than a person connected to the conveyance of goods shall travel in a goods vehicle.

(4) Notwithstanding the provisions of sub-rule (1) the Regional Transport Authority or the State Transport Authority, may subject to such conditions as it thinks fit allow a large number of persons to be carried in a goods vehicle.

(5) Nothing in this rule shall be deemed to authorise the carriage of any person for hire or reward on any goods vehicle, unless there is in force in respect of the vehicle a permit authorising the use of the vehicle for such purpose, and save in accordance with the provisions of such permit.

14 Sub Clause (2) of the above Rule clearly mandates that the owner of the goods is not entitled to travel upon the goods. Rule 277 (3) of the A.P. Motor Vehicles Rules, clearly shows that no person shall be carried in the goods vehicle except as provided in the Rule under the statute and as the only person, who is permitted to carry in goods vehicle is the owner or the hirer or bona fide employee of owner or hirer and total number of such persons, who could be carried in goods vehicle is not more than seven including the driver. Basing on the facts pleaded and proved, the irresistible conclusion that can be drawn is that the deceased travelled in the lorry while sleeping on the load in violation of the above rule. In order to claim compensation under Section 166 of the M.V. Act, the claimants have to establish that the accident occurred due to the rashness and negligence on the part of the driver of the crime vehicle only. However, the insurer or the insured can plead and prove the negligence or contributory negligence on the part of the deceased so as to absolve their liability to certain extent. If directly or indirectly the acts or omissions on the part of the deceased constitute negligence, fault or default, his legal representatives have to forego the compensation to the extent of percentage of his contributory negligence. The Tribunal or the Court has to take into

consideration the oral and documentary evidence as well as the other attending circumstances in order to arrive at a just and reasonable conclusion on this aspect. There is no straight jacket formula to fix the negligence by applying the mathematical principle. The yardstick or the test available to the Tribunal or the Court is whether the driver of the crime vehicle or the deceased as the case may be has acted as an ordinary prudent man or not. If the answer is affirmative, the question of negligence does not arise. If the answer is negative, then the Tribunal has to apportion the negligence between the driver of the crime vehicle and the deceased. A duty is cast on the driver of four wheelers more particularly, goods vehicle drivers not to allow passengers or owner of goods to travel on the load or in the body of the lorry. If any unfortunate incident happens, then the driver of the crime vehicle has to shoulder the responsibility. An ordinary prudent man will not allow passengers to travel on the load, more particularly, during night time. An ordinary prudent passenger who is very much conscious of the traffic rules and safety measures would not sleep on the load in the vehicle during night time. If any body travels on the load in the vehicle in the night time it amounts to inviting troubles or unforeseen incident by himself. Even if some body forces, a wise man would never sleep on the load in the body of the lorry. Even assuming but not conceding that the deceased was sleeping on the load at the instructions of the driver of the lorry, unfortunately the deceased has travelled knowing fully well the risk involved in it. In one way the deceased himself invited the mishap. The material available on record clinchingly establishes that the driver of the lorry as well as the deceased have not acted diligently. If the deceased had taken little bit of care and caution, the unfortunate death might not have taken place and he would have been alive. Basing on the material available on record, the Court can safely come to a conclusion that the deceased had contributed to cause the accident. Having regard to the facts and circumstances of the case, I am of the considered view that there was negligence on the part of the driver of the lorry as well as the deceased in the ratio of 60 : 40. The point is answered accordingly.

Point No.2:

15 The Tribunal awarded an amount of Rs.4,40,000/- as compensation to the petitioners under different heads. The claimants have not filed any appeal or

cross-objections challenging the quantum of compensation awarded by the Tribunal. Having regard to the facts and circumstances of the case, the compensation awarded by the Tribunal under different heads is just and reasonable. However, in view of the finding of this Court on point No.1, the petitioners have to forego 40% of the compensation awarded by the Tribunal. Therefore, the petitioners are entitled to 60% out of Rs.4,40,000/- which comes to Rs.2,64,000/-.

16 In the result, the appeal is allowed in part, reducing the amount of compensation from Rs.4,40,000/- to Rs.2,64,000/- with interest at 7.5% p.a. from the date of filing of the petition till the date of deposit with proportionate costs in the Tribunal. The respondent Nos.1 and 2 shall jointly and severally pay the same to the petitioners. Parties are directed to bear their own costs in this appeal. Consequently, miscellaneous petition if any pending in this miscellaneous appeal shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 30th March, 2015.

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