

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

M.A.C.M.A. No.1043 of 2010

JUDGMENT:

Challenging the Award dated 08.03.2010 in M.V.O.P.No.296 of 2006 passed by the Chairman, M.A.C.T-cum-District Judge, Chittoor (for short 'Tribunal'), the 2nd respondent in OP/ New India Assurance Company Limited, preferred the instant MACMA.

2 a) On factual side, on 25/26.05.2002 at about 1.00AM, the deceased by name M.D.Shabbir while driving auto bearing No. AP 03 T 3368 and proceeding towards Palamaner and when he reached near Cattle Farm on Palamaner—Bangalore road, a lorry bearing No.AAK 1188 being driven by its driver in a rash and negligent manner stopped the vehicle without giving any caution by making sudden brakes. Due to which the deceased hit the said lorry and as a result of which the deceased sustained grievous injuries and auto was also totally damaged. Immediately he was admitted in Government Hospital, Palamaner and from there he was shifted to General Hospital, Chennai for better treatment where he succumbed to injuries. On these pleas, the claimants filed M.V.O.P.No.296 of 2006 under Section 163A of Motor Vehicles Act, 1988 (for short "MV Act") against respondents 1 and 2, who are the owner and insurer of the offending lorry and claimed Rs.3,00,000/- as compensation.

b) Respondent No.1 remained *ex parte*.

c) Respondent No.2/Insurance Company filed counter denying all the material averments and urged to put the claimants in strict proof. R2 further contended that due to negligence of the deceased only the accident was occurred and sought dismissal of claim.

d) During trial, PWs.1 and 2 were examined and Exs.A.1 to 4 were marked on behalf of the claimants. Ex.B1—policy copy was marked on behalf of respondents.

e) The Tribunal on appreciation of oral and documentary evidence,

awarded a total sum of Rs.3,00,000/- with proportionate costs and interest @ 7% p.a. against respondents 1 and 2.

Hence, the appeal by the Insurance Company.

3) The parties in the appeal are referred as they stood before the Tribunal.

4) Heard arguments of Sri B.Naresh, learned Counsel for appellant/Insurance Company and Sri T.C.Krishnan, learned counsel for respondents Nos.1 to 4/claimants. Notice sent to R5/owner was not yet returned.

5) Challenging the liability of Insurance Company, the main plank of argument advanced by learned counsel for appellant/Insurance Company is that the accident was occurred due to the sole fault of the deceased auto driver as he himself drove the auto in a rash and negligent manner and went behind the stationed lorry and dashed it and caused the accident and as such, the Insurance Company is not liable for the claim of the LRs of the deceased. He would submit that there was no question of lorry being driven at high speed and in a rash and negligent manner in view of the admission of PW.2 that near the place of accident there was a Traffic check-post and also a Commercial Tax Check-post. He further argued that in the FIR it was clearly mentioned that the deceased drove the auto in a rash and negligent manner. He submitted that the Tribunal erred in fastening the liability on the owner and insurer of the lorry. He thus prayed to allow the appeal.

6) Per contra, learned counsel for respondents 1 to 4/claimants submitted that the claim being one under Sec.163-A of M.V.Act, the claimants need not establish the fault of lorry driver, suffice if they establish that the deceased died in a motor vehicle accident. Even then the claimants examined PW.2, who is an eye witness in the accident to prove the fact that due to sudden applying of brakes by the lorry driver, the deceased who was going behind the lorry, dashed the rear part of the lorry unable to control his auto. Learned

counsel argued that except relying upon the FIR contents, the appellant did not examine any witnesses like lorry driver or others to substantiate its contention and therefore, the Tribunal rightly held that the accident was occurred due to the fault of lorry driver. He thus prayed to dismiss the appeal.

7) In view of above rival arguments, the point for determination is:

“Whether the award passed by the Tribunal is factually and legally sustainable”?

8) **POINT:** It is the contention of the appellant/Insurance Company that the deceased who was driving the auto himself was responsible for the accident inasmuch as he drove the vehicle in a rash and negligent manner and dashed behind the stationed lorry. The claim petition was filed under Sec.163-A of M.V.Act. Hence, as rightly observed by the Tribunal, the claimants need not prove the fault of the concerned driver but suffice to prove that the deceased died in a motor vehicle accident. In spite of it, the claimants examined PW.2—P.Venkatesh, an eye witness. He deposed that he was travelling in the auto along with the deceased and the deceased was driving the vehicle slowly and cautiously and on the way in front of their auto the offending lorry bearing No.AAK 1188 was proceeding towards Palamaner and the driver of the lorry drove the vehicle in a rash and negligent manner and when they reached near cattle farm on Palamaner—Bangalore N.H-4 road, the lorry driver suddenly stopped the vehicle by applying the brakes without taking proper care and caution and as a result the backside of the lorry hit the auto which was coming behind the lorry and due to the impact of the hit, the deceased who was driving the auto sustained grievous injuries. This was the version of PW.2 regarding manner of occurrence of accident. He was thoroughly cross-examined by the appellant/Insurance Company but nothing specific could be extracted to impeach the credibility of his evidence. Further, the Insurance Company has not examined any witnesses to substantiate that the lorry was in a stationed position and auto driver himself went and hit on its back.

Having regard to this evidence, the Tribunal rightly held that the lorry driver was responsible for the accident. Therefore, I see no reason to differ with the finding of the Tribunal.

9) In the result, I find no merits in the appeal and accordingly, the same is dismissed by confirming the award passed by the Tribunal in MVOP No.296 of 2006.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 04.06.2015

Murthy / scs