

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.Nos.2003 & 2006 OF 2009

COMMON JUDGMENT:

The claimants are the appellants in the two appeals respectively impugning the respective awards of the Tribunal dated 30.11.2006 in O.P. No.413 and 415 of 2004. It is impugning the exoneration of the owner and insurer of the lorry bearing No.AP 02 U 4421 from liability and in fixing liability against the owner of the van bearing No.AP 02 U 4399 and not against the insurer since deceased persons were traveling in the said goods van of the 3rd respondent though insured with the 4th respondent for not covered by any additional contractual liability premium and what they claimed of traveling with Shamiana and other material and alleged luggage which cannot be considered as goods to say any persons as owner or attender of goods.

2) So far as claim petition appeal in MACMA No.2006 of 2009, the claimants are parents of the deceased Kum.Om Sundari aged about 22 years claimed as a private teacher died in the accident dated 28.02.2004 along with alleged other colleagues while traveling in the van with alleged luggage from the head on collision with opposite coming lorry supra succumbed to the injuries. The claim is under Section 166 of the M.V.Act for Rs.2,00,000/-. The age of the claimants shown as 40 and 45 years respectively, the Tribunal with the findings referred supra fixed liability against the van owner, 3rd respondent of the claim petition awarding the compensation as prayed for with interest at 7.5% p.a. The finding of the Tribunal is P.W-2 examined as eye witness is no other than informant of the accident traveling along with deceased persons in the van of the 3rd respondent and his

F.I.R speaks the accident was sheer negligence of van driver while overtaking another vehicle in dashed against opposite coming lorry of the 1st respondent and in his evidence, no doubt without explaining the above F.I.R contents deposed that it is the negligence of the opposite coming lorry driver, the accident occurred in which six persons died in all, who are traveling in the van including the driver of the van and he is survived though sat near the driver at the cabin. There is no scene observation report or M.V.I. report by examination of the two vehicles as to the accident of damage but the evidence shows there is a head on collusion. The F.I.R shows the van driver went on right side in overtaking and in the course of the accident occurred. The Tribunal therefrom held there is no negligence of lorry driver but of van driver and P.W-2's evidence before the Court cannot be believed to give credence of as if lorry driver total of negligence.

3) The grounds of appeal is in impugning the said finding of the Tribunal in saying as per the settled law, no doubt F.I.R and charge sheet are not the basis but for evidence before the Tribunal and Tribunal gravely erred in not fixing liability if not total atleast for the contribution by lorry driver against owner and insurer of the lorry respondent Nos.1 and 2 to the claim petition and Tribunal ought to have considered that the deceased persons were traveling along with goods and not mere luggage and statutory act policy even under Section 147 of the Act covers for owner or attender of goods to represent. Hence to allow the claim with joint liability against the 4 respondents.

4) Similarly in M.A.C.M.A. No.2003 of 2009 against O.P. No.415 of 2004, the claimants are wife and major son of deceased Frakruddien, aged about 55 years as per Ex.A-3 post mortem report but also was traveling in the van along with other deceased

persons and from same evidence on some facts in the claim maintained under Section 166 of the M.V.Act for Rs.4,00,000/-, Tribunal awarded Rs.4,00,000/- with interest at 7.5% by fixing liability against the van owner, 3rd respondent by exonerating the insurer of the van 4th respondent and also the owner and insurer of the lorry respondent Nos.1 and 2, with findings supra and the appeal maintained is with the contentions supra.

5) In the course of hearing, the learned counsel for both the appellants reiterated the above contentions in seeking to fix joint liability and also placed reliance though not binding on the Court of award of O.P. No.100 of 2004 of claimants of another injured of same accident traveling in the van award dated 20.04.2006 fixing 75% liability on the lorry owner and insurer and 25% on the owner of the van by exonerating the insurer of the van.

6) Whereas it is the contention of the learned counsel for the 4th respondent-insurer of the van that as rightly held by the Tribunal for none of the deceased persons shown specifically besides in proof of existence of Shamiana and tent material besides other luggage as owner or attender of the so called tent material for F.I.R is silent and F.I.R against van driver case closed for he met with death with no final report and no scene observation filed and for this Court while sitting in appeal, so far as exoneration of the insurer of the van concerned, there is nothing to interfere. Whereas, it is the contention of the learned counsel for the 2nd respondent insurer of the lorry that the Tribunal is right in its conclusion and for this Court while sitting in appeal there is nothing to interfere more particularly in the factual matrix P.W-2 himself is the person who reported the occurrence about the van driver at fault while overtaking another vehicle proceeding front

wards and dashed against opposite coming lorry by proceeded on long side and there is no fault on the lorry driver even there is any head on collision and thereby for this Court while sitting in appeal, there is nothing to interfere hence to dismiss the appeal in saying P.W-2 also admitted in cross-examination about his giving of F.I.R and there is no explanation even to the contents are not true of the F.I.R and the so called settled position of law of F.I.R by itself in evidence before the Court but for evidence before the Court even taken consideration that P.W-2 deposed when undisputed F.I.R contents when his admit to wriggle out from F.I.R contents without even saying as false could not succeed, thereby sought for dismissal.

7) Heard and perused the material on record.

8) Undisputedly the accident is the result of head on collision even from the F.I.R. It is the duty of the Court in appreciation of evidence not only to consider the oral evidence before the Court but also of other attending circumstances, no doubt from the only material available on record as part of appreciation. The injured P.W-2 one of the persons traveling in the van and sustained lacerations on the right side is also proved from Ex.A-5 wound certificate of him to support the factum of he is an eye witness to the occurrence, no doubt within no time of the occurrence, he went to the hospital and joined and also reported to the police from the injuries sustained simple and that is the outcome of Ex.A-1 F.I.R. In the F.I.R he says it is while overtaking another vehicle the van driver while rashly and negligently occurred the accident. No doubt that could not be ruled out. But the other facts show there is a head on collision. Once that is the case it is not the case of the van at the time the accident was on extreme wrong side on right in the head on

collision. The composite/contributory negligence depends upon several factors, including size of the vehicle, condition of the road, width and size of road and manner and the lie of the vehicles as to who was at wrong side or right side to decide also with reference to scene observation report, if any and the M.V.I report regarding existence of damage more particularly from the entire frontage or on respective right side portions. There is nothing to show lorry driver died in the accident but for van driver and more than five persons of the van besides several others sustained injuries of traveling in the van which is a goods vehicle. There is no evidence to show there was any tent material from the F.I.R, no whisper and there is nothing even to reflect if at all as to any of the persons traveling are concerned with either as owner or attendant with that tent material to such a person to cover statutory liability under Section 147 (1) proviso (c) of the M.V.Act. Tribunal is right in saying insurer of the van not liable because luggage cannot be considered as goods if at all there is any luggage of any of the deceased persons and injured persons in the goods vehicle, they are for policy not otherwise contractually covered unauthorized passengers for no policy coverage and for nothing to indemnify by the insurer. However, coming to the contribution of the lorry driver, if any, concerned as discussed supra once there is a head on collision and there is no evidence muchless oath against oath but for to rely on the F.I.R from the 2nd respondent insurer and the 1st respondent owner of the lorry by saying there was any attempt to aver the accident by stopping the lorry but for the lorry also coming with equal speed in contributing the accident it could not be such a drastic outcome of six or more persons traveling though packed in the van then met with death and P.W-2 sustained injuries in the accident. That also shows the contribution of the

lorry driver also from the factual matrix that was ignored by the Tribunal and mainly relied upon F.I.R and undoubtedly in this case P.W-2 could not explain the manner of accident and merely because he was while under panic. Having sustained the injuries including on seeing the accident and from the factum of van driver was while overtaking, the accident occurred in his tentative conclusion for not to be all and end all for what the material discloses supra that could not be exonerate as the award copy of the Tribunal in O.P. No.100 of 2004 fixing 75% liability is not sustainable per se from the material, it can be said atleast there is 25% contribution by lorry driver also.

9) Now, coming to the quantum of compensation, what the oral contention of the respective appellants of utterly low by relying on the three Judge bench expression of Apex Court in **Rajesh v. Rajbir Singh** ^[1] that the Tribunal has to consider the just compensation irrespective of the claim for entitlement, in M.A.C.M.A.No.2006 of 2009 concerned from the age of the parents taken between 41 to 45 by adopting 14 as multiplier from the accident dated 28.02.2004 even taken for no proof regarding avocation of deceased, earnings at Rs.3,200/- per month, if $\frac{1}{2}$ deducted towards personal expenses i.e., $1600 \times 12 \times 14 = 2,68,800/-$. Apart from it, Rs.35,000/- towards funeral expenses and loss of estate i.e., Rs.3,03,800/- is the just compensation to enhance subject to payment of deficit Court Fees under Rule 475 of A.P.Motor Vehicles Rules, needless to say without payment of deficit Court Fees, not entitled to exonerate.

10) Coming to O.P. No.415 of 2004, the deceased is aged about 55 years. There is no proof regarding he is a head master muchless in a Government school or in a particular school or proof

regarding his earnings. Thus, even taken at Rs.3,200/- per month and if 1/3rd deducted towards personal expenses, because among the two claimants major son not depending and wife alone depending vide **Sarla Verma v Delhi Transport Corporation**^[2] para Nos.30 to 33, it comes to Rs.2,133.33 x 12 x 10 as per the above multiplier from the age about 55 years Rs.2,56,000/- + 1,35,000/- = Rs.3,91,000/- is the compensation entitled though what is claimed of Rs.4,00,000/- for want of cross-objections, there is nothing to reduce.

11) Accordingly and in the result, both the appeals are allowed in part and in so far as M.A.C.M.A. No.2003 of 2009 while confirming the quantum of compensation by fixing liability on the respondents 1 and 2 at 25% and the remaining liability of 75% on 3rd respondent and so far as M.A.C.M.A.No.2006 of 2009 concerned by enhancing the compensation from Rs.2,00,000/- to Rs.3,91,000/- subject to interest liability only from today on the enhanced amount, subject to payment of deficit Court fees before the Tribunal as per Rule 475 of A.P. M.V. Rules by apportioning 25% liability on the respondent Nos.1 and 2 and the remaining 75% on the 3rd respondent. In all other respects, awards of the Tribunal holds good. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in both these appeals shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:06-01-2016

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^[1] 2013 ACJ 1403=(4)ALT-35(SC).

^[2] 2009 ACJ 1298.