HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.34 of 2009

JUDGMENT:

Aggrieved by the Award dt.23.07.2008 in M.V.O.P.No.91 of 2004 passed by the Chairman, M.A.C.T-cum-IV Additional District Judge, Kadapa (for short 'the Tribunal'), the National Insurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant is that on 02.03.2003 at about 3:45 pm, she along with one Shaik Mohammad Yunus boarded the auto bearing No.AP 04 U 5619 at Khajipet bus stand to go to Chennur and when it reached near Chennur bridge, the driver of auto drove at high speed and at the same time, one mini lorry bearing No.AP 21 U 4556 came in opposite direction at high speed and in a rash and negligent manner and dashed the auto resulting in head on collision. In the resultant accident, one passenger of auto died and whereas the claimant sustained fracture of tibia and fibula of her right leg, fracture of 5^{th} and 6^{th} ribs on right side and fracture of rami of both pubic bones. It is averred that accident was occurred due to rash and negligent driving by the drivers of both vehicles i.e, auto and lorry. On these pleas, the claimant filed M.V.O.P.No.91 of 2004 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 to 4, who are owners and insurers of auto and lorry respectively and claimed Rs.1,50,000/- as compensation.

b) Respondents 1 and 2/owners remained *ex parte*.

c) R3/Insurance Company of the mini lorry filed counter denying all the averments made in the claim petition and urged to put the claimant to strict proof of the same. It contended that driver of the mini lorry had no valid and effective driving licence and hence it is not liable to pay compensation. Finally, R3 contended that compensation claimed by the claimant is highly excessive and thus prayed to dismiss the OP.

d) R4/Insurance Company of the auto filed written statement and contended that the driver of the auto had no valid driving licence and it disowned its liability on the ground that the auto is classified as goods carrying vehicle but not passenger carrying vehicle. R.4 further contended that the injuries sustained by the claimant are simple in nature and there is no permanent disability to her and she was attending to her works as before. Finally, R.4 contended that the compensation claimed is high and excessive and thus prayed to dismiss the O.P.

e) During trial, PWs.1 and 2 were examined and Exs.A1 to A3 were marked on behalf of claimant. RW.1 was examined and Exs.B.1 to B.4 were marked on behalf of respondents.

f) The Tribunal on appreciation of both oral and documentary evidence, while exonerating the R.4/Insurer of the auto, fixed joint and several liability on respondents 1 to 3 and ultimately awarded Rs.1,07,000/- as compensation with proportionate costs and interest @ 7.5% p.a. under different heads as below:

Loss of earnings	Rs. 15,000/-
Attendant charges	Rs. 9,000/-
Loss of future earnings	Rs. 45,000/-
Pain and suffering	Rs. 30,000/-
Mental agony	Rs. 5,000/-
Extra nourishment	Rs. 3,000/-
Total	Rs.1,07,000/-

Hence, the appeal by National Insurance Company Ltd/R.3 in the O.P.

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

4) Heard arguments of Sri M.Rama Krishna, learned counsel appearing for Smt. M.Bhaskara Lakshmi, learned counsel for appellant/Insurance Company; Sri P.Ravi Shankar, learned counsel for R1/claimant; Sri G.Prabhakar Sarma, learned counsel for R.2 and Sri Vutla Srinivas, learned counsel appearing for Smt.A.Malathi, learned counsel for R.4. Notice sent to R3 was served but there is no representation on its behalf.

5) Castigating the Award, learned counsel for appellant mainly argued that the lower Tribunal having come to conclusion that the accident was occurred due to the fault of drivers of both the vehicles, failed to apportion the liability between the respective drivers and on the other hand directed that respondents 1 to 3 are jointly and severally liable to pay compensation awarded. By this, learned counsel argued, the claimant inclined to execute the Award against only respondents 2 and 3 in the O.P i.e, owner and insurer of the mini lorry as the said vehicle was covered with insurance policy, leaving aside 1st respondent because his insurer was exonerated. In that event, the appellant/R.3 in the O.P will be liable to bear the entire compensation though the vehicle for which he extended insurance policy was liable only partly. He thus prayed to apportion the liability between the two vehicles to mitigate the responsibility of the appellant to that extent.

6) Per contra, learned counsel for R.4 while supporting the Award argued that since it is a case of composite negligence of drivers of two vehicles which resulted in accident to the claimant, she is at liberty to bring action against both the joint tortfeasors or any one of them and in this case she choose to sue the owners and insurers of both the vehicles and the Tribunal while exonerating R.4 for breach of the terms of the policy, rightly fixed liability on the owners of both the vehicles and insurer of the mini lorry and therefore, the question of apportionment of liability between the two vehicles does not arise. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination in this appeal is:

"Whether the lower Tribunal was right in fixing liability on respondents 1 to 3 jointly and severally instead of apportioning the liability between the two vehicles?"

8) **POINT**: The accident, involvement of mini lorry bearing No.AP 21 U 4556 and auto bearing No.AP 04 U 5619 and injuries to the claimant are admitted facts. As can be seen from the impugned Award, the lower Tribunal basing on the evidence on record has come to conclusion that the accident was occurred owing to the rash and negligent driving of the drivers of the auto and mini lorry resulting in injuries to the claimant. Thereupon the Tribunal arrived at a compensation of Rs.1,07,000/- and held that respondents 1 to 3 i.e, owners of both the vehicles and insurer of mini lorry are jointly and severally liable to pay compensation. Before fixing liability jointly and severally, the Tribunal has made an exhaustive discussion on the aspects of contributory and composite negligence and held that it was a case of composite negligence of the drivers of the two vehicles wherein no role was played by the claimant who suffered injuries. Accordingly, the Tribunal fixed liability on respondents 1 to 3 jointly and severally. The law on contributory and composite negligence is no more *res integra*. In ***Municipal Corporation of Greater Bombay vs. Shri Laxman Iyer and another***[1], the Apex Court has well delineated the distinction between the two types of negligences, thus:

> *Para 5: xx xx*
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> *…Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a. nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See Charles worth on Negligence, 3rd Edn. Para 328). It is now well settled that in the case of contributory negligence, courts have power to apportion the loss between the parties as seems just and equitable. Apportionment in that context means that damage are reduced to such an extent as the court thinks just and equitable having regard to the claim shared in the responsibility for the damage.* ***But in a case where there has been no contributory negligence on the part of the victim, the question of apportionment does not arise. Where a person is injured without any negligence***

> ***on his part but as a result of combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense** (Emphasis supplied). It is a case of what has been styled by Pollock as injury by composite negligence. (See Pollock on Torts, 15th Edn. P.361)"*

a) In the case on hand also, the claimant being a passenger in the auto has not contributed for the accident in any manner. It was rather the drivers of both the vehicles by dint of their rash and negligent acts caused the accident and therefore, it is a case of composite negligence. In which case, the Court need not apportion the liability among the tortfeasors. On the other hand, the Court can award compensation against the joint tortfeasors making them liable jointly and severally. This aspect was discussed by the Apex Court in ***T.O.Anthony vs. Karvarnan and others***[2], wherein it was held as follows:

> ***"**Para 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 wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer 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 wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer 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 stand reduced in proportion to his contributory negligence."*

b) This High Court has also held in the same lines vide ***Sombathina Ramu vs. T.Srinivasulu***[3] and ***National Insurance Company Limited vs. A.Bandari Sunitha and others***[4].

c) In view of the catena of decisions on the point in issue, speaking to the effect that in case of composite negligence, all the tortfeasors can be jointly and severally held responsible, the argument of learned counsel for appellant/ R.3 in the O.P otherwise cannot be accepted. Hence, it is held that the lower Tribunal was right in fixing liability on R.1 to R.3 jointly and severally.

9) In the result, this MACMA is dismissed by confirming the Award dt:23.07.2008 passed by the lower Tribunal in M.V.O.P.No.91 of 2004. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 05.07.2016
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[1] 2004 ACJ 53 (SC)

[2] (2008) 3 SCC 748

[3] 2008(3) ALD 362

[4] 2016(3) ALD 645 = 2015(2) An.W.R.906 (AP)