

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.3074 OF 2009, 184 OF 2014 AND 898 OF 2016

COMMON JUDGMENT:

M.A.C.M.A. No.3074 of 2009 arises out of M.V.O.P. No.48 of 2008 on the file of the Chairman, Motor Accidents Claims Tribunal - cum - V Additional District Judge, Rayachoty, Kadapa District (Old M.V.O.P. No.615 of 2005 on the file of the Principal District Judge, Kadapa).

2. M/s. Royal Sundaram Alliance Insurance Company Limited, who is respondent No.2 in the said original petition, challenging the order and decree dated 21.11.2008, passed in the said original petition, preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') on the ground that, though, the deceased does not fall within the definition of 'owner of the goods', still, the Tribunal granted compensation of Rs.2,99,500/- fastening joint and several liability on respondent Nos.1 and 2, who are owner and insurer of lorry bearing registration No.AP 26U 7919.

3. The second ground agitated is that though, there was a direct collision between two lorries and the evidence on record through P.W.2-eyewitness to the occurrence, besides being the injured who preferred M.A.C.M.A. No.898 of 2016 seeking enhancement, which would be referred to a little later, proving the negligence of drivers of both lorries, still, the Tribunal mulcted liability on it only, by dismissing the claim petition against owner and insurer of opposite lorry bearing registration No.ADD 1962.

These are the two grounds basing on which the insurer of the lorry bearing registration No.AP 26U 7919 challenged the order and decree.

4. M.A.C.M.A. No.184 of 2014 is also preferred by the very same appellant - M/s. Royal Sundaram Alliance Insurance Company Limited, who is respondent No.2 in M.V.O.P. No.70 of 2008 on the file of the very same Tribunal, challenging the order and decree dated 01.03.2011, agitating the very same grounds as mentioned in the above. Whereas, M.A.C.M.A. No.898 of 2016 is preferred by the injured-petitioner in M.V.O.P. No.70 of 2008 challenging the very same order and decree on the ground that a meager amount was granted by the Tribunal as compensation.

5. Thus, it is clear that in the very same accident, for the death of one Gali Kondaiah (deceased), his parents being legal representatives preferred M.V.O.P. No.48 of 2008, against which order and decree M.A.C.M.A. No.3074 of 2009 is preferred; whereas, for the injuries sustained by one Papireddy Govinda Reddy, claim petition in M.V.O.P. No.70 of 2008 was filed, against which order and decree, the other appeals, i.e., M.A.C.M.A. Nos.184 of 2014 and 898 of 2016, are preferred by the insurer and the injured respectively.

6. Respondent Nos.1 and 2 in MACMA 3074 of 2009 are petitioners in MVOP No.48 of 2008, whereas, the appellant - M/s. Royal Sundaram Alliance Insurance Company Limited in MACMA No.3074 of 2009, who is also appellant in MACMA No.184 of 2014 and respondent No.2 in MACMA 898 of 2016, and respondent No.3, who is respondent

No.2 in MACMA No.184 of 2014 and respondent No.1 in MACMA No.898 of 2016 are owner and insurer of lorry bearing registration No.AP26U 7919, respectively, arrayed as respondent Nos. 1 and 2 in MVOP before the Tribunal; while respondent Nos.4 and 5, who are owner and insurer of other lorry bearing registration No.ADD 1962, are respondent Nos.3 and 4 in MACMA No.184 of 2014 and MACMA No.898 of 2016 and so also before the Tribunal. The appellant in MACMA No.898 of 2016 is the injured petitioner in MVOP No.70 of 2008.

7. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the original petitions before the Tribunal.

8. It would be appropriate to refer to certain basic facts that would aid for disposal of all these appeals. The deceased and injured both along with another person alleged to have hired a lorry bearing registration No.AP 26U 7919 belonging to respondent No.1 and insured with respondent No.2, to transport tomatoes to Chilakaluripeta Government Market Yard for selling them. Thus, according to them, all of them have loaded 70 boxes of tomatoes in the lorry and they started on 23.03.2005, during evening time. When their lorry reached near Kamepalli of Santhamagalur Mandal of Prakasham District in the morning time, since their driver drove it in a rash and negligent manner, hit the lorry bearing registration No.ADD 1962 belonging to respondent No.3 and insured with respondent No.4, coming in opposite direction which was also driven by its driver in a rash and negligent manner at high speed and the impact was such that some of the persons

travelling in both the lorries suffered instantaneous death and some of them received injuries.

9. The petitioners in M.V.O.P. No.48 of 2008 claiming that their deceased son was initially admitted in Narsaraopeta hospital, from there, he was shifted to Government General Hospital, Guntur, and from there, to High Tech Trauma Critical Care Hospital at Guntur, for better treatment and was treated as an inpatient up to 29.04.2005, but could not recover and, thereafter, he was shifted to Government General Hospital, Kurnool, where he was treated till 02.05.2005, but succumbed to injuries on that day; spent Rs.1,00,000/- to meet the medical expenses; their son was unmarried and aged 22 years, doing agriculture and vegetable business earning Rs.6,000/- per month and, therefore, they sought a compensation of Rs.5,00,000/-.

10. In M.V.O.P. No.70 of 2008, the injured petitioner, also claiming that he was initially treated in Government Hospital, Narasaraopet and, thereafter, shifted to Government General Hospital, Guntur, and again he was shifted to a private nursing home, viz., Peoples Trauma and Emergency Hospital, Guntur, where he was treated as an inpatient up to 03.05.2005 and undergone surgical interventions with steel rods, being implanted to both legs, and again, attended to review on four occasions, sought a sum of Rs.10,00,000/-. Both the claims were laid under Section 166 of the Act.

11. The Tribunal, somehow, dealt with both the claim petitions at different times instead of trying them jointly and passing a common order.

12. In both the claim petitions, relevant issues were framed.

13. During inquiry, in M.V.O.P. No.48 of 2008, petitioner No.1 was examined as PW.1 and the petitioner in M.V.O.P. No.70 of 2008 was examined as PW.2 and Exs.A-1 to A-9 were marked; whereas in M.V.O.P. No.70 of 2008, the injured petitioner besides examining himself as PW.1, has examined the doctors as PWs.2 and 3 and marked Exs.A-1 to A-11 and also Exs.X-1 and X-2, which are case sheets. On behalf of respondents, no witnesses were examined and no documents were marked.

14. In M.V.O.P. No.48 of 2008, the Tribunal, while recording findings in favour of the petitioners, awarded a total sum of Rs.2,99,500/- apportioning the said amount between the petitioners with interest at 7.5% per annum and accordingly, allowed the claim petition partly, mulcting liability on respondent Nos.1 and 2.

15. In M.V.O.P. No.70 of 2008, the Tribunal, having considered the evidence of P.Ws.2 and 3-Medical Officers, taken disability at 30%, applied multiplier '18', though, the deceased was aged 26 years, perhaps, picking up the multiplier from the Schedule-II appended to Section 163-A of the Act, though, by then, the decision in **Sarla Verma & others v. Delhi Transport Corporation and another**¹ was already rendered by the Hon'ble Supreme Court, and arrived at Rs.1,94,400/- towards loss of future earning capacity. Various amounts were granted under other heads falling under special damages, which need not be elaborately referred to once again.

¹ (2009) 6 SCC 121

Thus, a total sum of Rs.4,41,900/- was granted with interest at 7.5% per annum against respondent Nos.1 and 2.

16. The Tribunal, however, dismissed the claim petitions against respondent Nos.3 and 4, who are the owner and insurer of lorry bearing registration No.ADD 1962, which was the opposite lorry involved in the accident, on the ground that, though, P.W.2-an eyewitness, who is injured claimant in M.V.O.P. No.70 of 2008, asserted that on account of rash and negligent driving of drivers of both the lorries, there was a collision resulting in deaths as well as injuries to the inmates of both lorries, still, the Tribunal, basing on the contents of charge sheet that driver of the lorry in which the deceased and the injured petitioner were travelling was arraigned as accused leaving the driver of the opposite lorry and, thereby, held that the respondent Nos.1 and 2 alone are liable to pay the compensation.

17. These two orders and decrees respectively, given rise to preferring these appeals by the insurance company and the appeal by the injured as stated in the above.

18. Heard Sri Kota Subba Rao, learned Standing Counsel for the appellant in M.A.C.M.A. Nos.3074 of 2009 and 184 of 2014 and respondent No.2 in M.A.C.M.A. No.898 of 2016, Sri K.Rathanga Pani Reddy, learned counsel for respondent Nos.1 and 2 in M.A.C.M.A. No.3074 of 2009, and Sri K.S.Murthy, learned counsel for the appellant in M.A.C.M.A. No.898 of 2016 and respondent No.1 in M.A.C.M.A. No.184 of 2014. No representation for the remaining respondents.

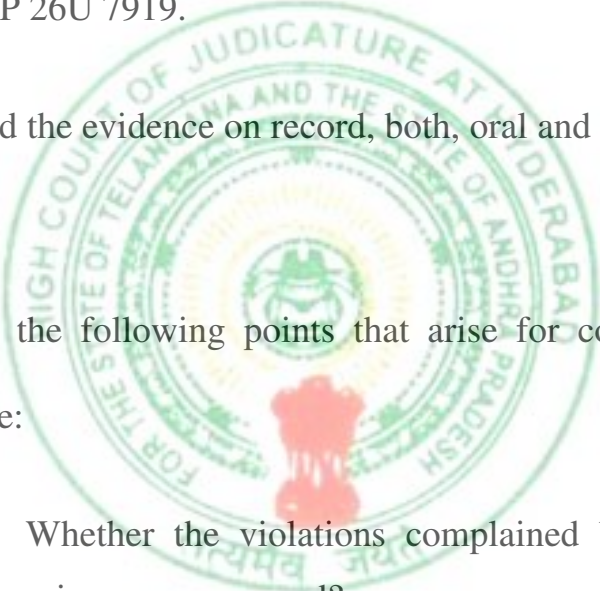
19. Sri Kota Subba Rao, learned Standing Counsel for the appellant - insurer would submit that the Tribunal went wrong in mulcting liability on respondent Nos.1 and 2 only, despite the fact that the accident was due to head-on-collision between two lorries, which, invariably gives rise to an inference that unless the drivers of both the lorries driven the vehicles in a rash and negligent manner at high speed, there would not have been a head-on-collision. He even strongly relies on the evidence of P.W.2 and the contents of F.I.R., wherein negligence of drivers of both the lorries is mentioned and asserted by P.W.2-an eyewitness to the occurrence and, therefore, contends that the Tribunal ought to have considered the evidence on record, more particularly, when the claimants themselves have been coming up with a definite plea that the negligence was on part of both the drivers, which plea even proved through the evidence of P.W.2 in the first claim petition and as P.W.1 in his own petition seeking compensation for the injuries he sustained and the Tribunal ought not to have just carried away by the contents of the charge sheet. Therefore, it is according to him, liability has to be split between the drivers of both the lorries and, consequently, compensation has to be paid by the owners and insurers of both the lorries in equal halves. It is also according to him, the lorry, in which the deceased and the injured in these two claim petitions were travelling, was not just alleged to have hired by one particular owner of goods and the contents of the very claim petition laid by the injured would show that three of them said to have hired the lorry jointly. It is according to the learned counsel that the expression 'owner of the goods' would refer to only one particular

owner, but not the joint owner of the goods. It is also his submission that the evidence on record would indicate that there were some more passengers in the lorry and, therefore, no liability, at all, can be fastened on the insurance company.

20. To examine in case, if liability is apportioned between both the lorries, whether opposite lorry's owner and insurer can be directed to pay 50% of compensation to the petitioners in claim petitions even if they are construed as more than one owner of goods hiring the lorry bearing registration No.AP 26U 7919.

21. Perused the evidence on record, both, oral and documentary, let in by the parties.

22. Now, the following points that arise for consideration in the instant appeals are:

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- i) Whether the violations complained by the appellant - insurer are proved?
 - ii) Whether there has been contributory negligent on the part of the drivers of both the lorries?

Point No.1:

23. On the ground that there has been violations as more than three owners have been travelling along with tomato baskets and it amounts to violation of terms and conditions of the policy, certainly, there cannot be more than one owner, who hires a goods vehicle as the expression used in Section 147 of the Act refers to 'singular' as the phraseology runs thus

‘owner of the goods or his authorized representative’. Therefore, it cannot be said that there has been no violation of terms and conditions of the policy. There is merit in the submission made by the learned counsel for the appellant - insurer in both the appeals, more particularly, when no authorities have been placed in the direction of explaining the meaning of the word “owner” occurring in the said provision, as to whether it gives more than one owner or restricts to one owner alone. Therefore, there is merit in the submission made by the learned standing counsel for the appellant in both the appeals. On that short ground itself, it has to be held that the Tribunal went wrong in fastening liability on the appellants in MACMA No.3047 of 2009 and 184 of 2014. Accordingly, point No.1 is answered.

Point No.2:

24. Turning to the facts in the instant case, the petitioners, more particularly, the injured petitioner in MVOP No.70 of 2008 arrayed owners of both lorries as respondent Nos.1 and 3 respectively, alleging rash and negligent driving by both the drivers. Even in the evidence of PW.2, the injured, who is petitioner in MVOP No.70 of 2008, categorically asserted that on account of rash and negligent driving of both the drivers, a direct collision occurred between two vehicles. It is no doubt true, only the driver of the lorry in which the deceased and injured (PW.2) were travelling, was charged for the offence punishable under Section 304A IPC and charge sheet was laid. No doubt, investigation must have been done and filed charge sheet basing on *prima facie* material then available. But, that cannot be a ground to throw away the pleadings and assertions made by PW.2 that

attributing negligence to the driver of lorry bearing No.ADD 1962. When evidence of PW.2 is examined, there is absolutely nothing to brush aside that assertion and no other admissions have been brought on record that the driver of lorry No.ADD 1962 was not negligent and did not contribute to the taking place of the accident. The Tribunal appears to have carried away by the charge sheet instead of weighing the oral evidence of PW.2, the injured – cum - eye witness, and other circumstances on record. Therefore, it has to be held that the drivers of both vehicles are negligent and contributed to the accident and, therefore, liability has to be apportioned 50% each and, accordingly, the point is answered. Therefore, the owner and insurer of lorry No.ADD 1962, who are respondent Nos.3 and 4 in both the claim petitions, are also liable to pay the compensation to the extent of 50%.

MACMA No.3074 of 2009 & MACMA No.184 OF 2014

25. In so far as MACMA No.3074 of 2009 is concerned, the Tribunal has awarded Rs.2,99,500/- in M.V.O.P. No.48 of 2008 for the death of deceased in favour of the legal representatives, who are petitioners therein. So far as 50% thereof amounting to Rs.1,49,750/- is concerned, the said amount is payable by respondent Nos.3 and 4, who are owner and insurer of lorry No.ADD 1962. Similarly, in MVOP No.70 of 2008, the Tribunal awarded Rs.4,41,900/- as compensation; 50% thereof amounting to Rs.2,20,950/- is concerned, the amount is payable by respondent Nos.3 and 4 therein. The appellant - Insurer has already deposited 50% of the amount in both the claim petitions and the respective petitioners were also permitted to withdraw the amounts. If the claim petitioners withdrawn the amounts

more than 50%, the appellant - insurer - respondent No.2 in both the claim petitions is at liberty to recover the same from owner and insurer of lorry No.ADD 1962, who are arrayed as respondent Nos.3 and 4. Further, the respective petitioners are entitled to recover the remaining 50% amount from owner and insurer of lorry No.ADD 1962, respondent Nos.3 and 4. If any amount is still due which the owner and insurer are liable to pay, the petitioners are at liberty to recover the same from them.

MACMA No.898 OF 2016

26. The petitioner sought compensation of Rs.10,00,000/-, as against which, the Tribunal has granted Rs.4,41,900/-; he sought remaining amount of Rs.5,58,100/-. The findings recorded by the Tribunal, in fact, show that the multiplier factor '18' is applied taking partial permanent disability as 30%; the annual income at Rs.36,000/- by recording a finding that the actual income per annum has not been proved by production of legally acceptable evidence, and the title deed (Ex.A-10) only shows that the petitioner was owning and possessing Acs.3-74 cents of land, both wet and dry. Thus, the said finding does not warrant interference as it is based on appreciation of evidence on record and, therefore, the amount of Rs.1,94,400/- worked out by the Tribunal towards 30% disability cannot be faulted.

i) The other amounts awarded by the Tribunal are also reasonable and disability issued under Ex.A-7 at 70% was not considered and 30% was considered basing on the evidence of PW.2 cannot also be faulted. Thus,

there is no merit in the appeal to enhance the amounts and, accordingly, the same stands dismissed.

27. In view of the aforesaid discussion, MACMA Nos.3074 of 2009 and 184 of 2014 are allowed in part to the extent indicated in the above, while MACMA No.898 of 2016 is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in these appeals, stand closed.

A. SHANKAR NARAYANA, J

November 25, 2016
Siva/Mgr

