

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.3 of 2009

JUDGMENT:

Aggrieved by the Award dt.03.10.2008 in O.P.No.656 of 2006 passed by the Chairman, M.A.C.T-cum-Principal District Judge, Medak at Sangareddy (for short 'the Tribunal'), the United India Insurance Company Limited preferred the instant appeal.

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

3) The factual matrix of the case is thus:

a) The case of the claimants is that on 20.04.2006 at about 10:30pm, while the deceased—Nagulapally Nagaraj Goud was returning to Sadasivpet on his Motorcycle bearing No.AP 28 H 9261 and when he reached near Gangakathwa bridge, in the limits of Aroor village on NH-9, one lorry bearing No.AP 09 T 2568 being driven by its driver at high speed and in a rash and negligent manner, came from opposite direction and dashed the motorcycle causing his instantaneous death. It is averred that the accident was occurred due to rash and negligent driving by the driver of offending lorry. On these pleas, the claimants filed O.P.No.656 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2, who are owner and insurer of the offending lorry and claimed Rs.6,00,000/- as compensation.

b) R.1 filed counter and denied the allegations made in the petition and urged to put the claimants in strict proof of the same. Finally, R.1 prayed to dismiss the OP for non-joinder of owner and insurance company of the motorcycle.

c) R.2/Insurance Company filed counter denying all the averments made in the claim petition and urged to put the claimants to strict proof of the same. R.2 contended that the accident was not occurred due to rash and negligent driving by the driver of lorry but due to the deceased himself. R.2 denied that the driver of the crime lorry had valid subsisting driving licence by the date of accident. Finally, R.2 contended that the case was registered against unknown vehicle and after 32 days of the accident, the crime vehicle is implicated in this case and thus prayed to dismiss the OP.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of claimants. On behalf of respondent No.2, Exs.B.1 and B.2 were marked.

e) The Tribunal having regard to the oral and documentary evidence awarded Rs.3,50,000/- as compensation with proportionate costs and interest at 7.5% p.a. against the respondents 1 and 2 under different heads as below:

Loss of earnings	Rs. 3,39,864/-
Loss of consortium	Rs. 10,000/-

Total	Rs. 3,49,864/-

(Rounded of to Rs.3,50,000/-)

Hence, the appeal by Insurance Company.

4) Heard arguments of Sri K.Madhusudhan Reddy, learned counsel for appellant/Insurance Company and Sri S. Sudarshan, learned counsel for R.1 to R.4/claimants. Though notice to R.5 was served but there is no representation on his behalf.

5) Learned counsel for appellant/Insurance Company Sri K. Madhusudhan Reddy, castigated the Award on the main argument that as per FIR the accident was caused by an unknown vehicle but the charge sheet was filed against the driver of the lorry bearing No.AP 9 T 2568 for two reasons that PW.2—Abdul Quddus, who travelled in the crime vehicle and witnessed the accident has approached the police on 22.05.2006 and informed about the accident particulars including the alleged involvement of the crime vehicle and secondly that on 12.05.2006, the owner of the crime vehicle i.e, R.1 in the O.P approached the police and voluntarily surrendered the driver of the crime vehicle admitting his guilt and also involvement of crime vehicle. Learned counsel would vehemently argue that both these reasons are palpably false besides being inherently improbable. He argued that if PW.2 travelled in the crime vehicle and witnessed the accident and came to know about the particulars of the deceased on the next day through newspaper, nothing prevented him from

approaching the police immediately to inform the accident particulars but curiously, he allegedly approached police only on 22.05.2006 and informed about the accident which is quite unbelievable. For that matter, even the owner of the crime vehicle surrendering his driver is also a make believable story. He submitted that the younger brother of the deceased namely Pavan Kumar Goud is a owner of 4 lorries and he is the President of the Lorry Owners Association at Sadasivpet and he must have influenced R.1 to implant his vehicle to claim compensation though some unknown vehicle caused the accident. He would argue that unfortunately the lower Tribunal has not considered these facts in proper perspective and erroneously fastened liability on respondents 1 and 2 in the O.P. He thus prayed to allow the appeal and exonerate the Insurance Company and even the owner of the vehicle.

6) In oppugnation, learned counsel for respondents 1 to 4/ claimants Sri S. Sudarshan, while supporting the Award argued that the involvement of the lorry bearing No.AP 09 T 2568 was very much established through cogent oral and documentary evidence and therefore, the lower Tribunal rightly negatived the contra argument of the Insurance Company and in that view, the present contention of the appellant is unsustainable. He argued that since the accident was occurred in the night time at about 10:30pm on the Highway and as the crime lorry ran away without

stopping at the accident spot, the complainant who was passing in that way and saw the deceased only sometime after the accident, had no occasion to know the particulars of the crime vehicle and therefore, in FIR he rightly mentioned the crime vehicle as an unknown vehicle. However, that was not the end of the matter. The claimants could examine PW.2 who happened to travel in the crime lorry and witnessed the accident. He categorically deposed that the accident was caused by the driver of the crime lorry and inspite of his shouting to stop the vehicle, he did not stop and sped away. Learned counsel would argue that except giving suggestion that he did not witness the accident and accommodating the claimants, nothing specific could be extracted to disprove his evidence. PW.2 was cited by the police as an eye witness in the charge sheet. Besides he is an independent witness and unconnected to the claimants and therefore, there is nothing on board to discard his evidence and hence the Tribunal rightly believed his evidence. Besides, the owner surrendered his driver before the police who admitted his guilt. These facts weighed with the police to file charge sheet against the driver of the crime vehicle. Learned counsel argued that except impugning these two incidents as false and improbable, the Insurance Company has not produced any contra evidence to establish that the crime vehicle was not involved in the accident though it amounts to proving a negative fact. The Insurance Company could have

examined the owner and driver of the crime vehicle but it did not do so. Therefore, the Insurance Company cannot harp now that the crime vehicle was not involved in the accident. He relied upon the decision reported in ***Kunta Rajitha and others vs. M.Jayapal Reddy and another***^[1] and argued that in similar circumstances this High Court was pleased to dismiss the contention of the Insurance Company. 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 holding that lorry bearing No.AP 09 T 2568 was involved in the accident and thereby fixing liability on respondents 1 and 2, who are the owner and insurer of the said vehicle?”

8) **POINT**: As can be seen from the record, the claimants in order to establish that the lorry bearing No.AP 09 T 2568 was indeed involved in the accident, relied upon Ex.A.2—charge sheet and the oral evidence of PW.2. As already discussed supra, the charge sheet was filed against the driver of the lorry bearing No.AP 09 T 2586 basing on the two instances i.e, through the evidence of PW.2 and the surrendering of lorry driver by his owner. These two instances were found fault by the Insurance Company on the ground that they are quite unnatural and improbable and on the other hand, the younger brother of the deceased who happens to be the owner of the lorries and the President of the Lorry Owners Association influenced R.1 to

accommodate his vehicle to fix as crime vehicle.

9) In this context, I perused the evidence of PW.2. He deposed that he boarded the lorry bearing No.AP 09 T 2568 at Sadasivpet to go to Zaheerabad on the night of 20.04.2006 and about 10:30pm, when their lorry reached Aroor village limits near Ganga Kathwa bridge on NH-9, he found one motorcyclist was coming from Zaheerabad to Sadasivpet and the lorry driver dashed the said motorcycle due to his rash and negligent driving and thereby the motorcyclist received grievous injuries and died on the spot. He further deposed, the driver did not stop the lorry at the scene and sped away and on the way he stopped the lorry and dropped this witness. He further deposed that on the next day i.e, on 21.04.2006 through Newspaper he came to know that the deceased was Mr. Nagaraj Goud, then he went to the Police Station and informed police Sadasivpet. Thus he claimed to be an eye witness to the accident. In the cross-examination on behalf of Insurance Company he asserted that he travelled in the crime vehicle by boarding the lorry near Police Station. He stated that apart from the cleaner and the driver, two passengers were there at the time of his boarding the lorry. He sat in the middle seat of the lorry cabin. He further stated that he shouted to stop the vehicle but the driver did not stop the vehicle. He denied the suggestion that he did not witness the accident and deposing falsehood to help the claimants. He admitted that he did not observe the lorry number when he got into it. The

lower Tribunal believed the evidence of PW.2 and in my view rightly so. As can be seen from the cross-examination, except giving a suggestion that he did not travel in the crime vehicle which was denied, nothing specific could be elicited to impeach the credibility of this witness. As rightly argued, this witness is an independent person and no connection is attributed with the claimants to depose falsehood. It is true that after knowing about the accident on the very next day, he did not approach police but as per charge sheet he went to the police only on 22.05.2006. However, on that ground alone his evidence cannot be discarded, particularly when his credibility could not be shattered in the cross-examination. Therefore, the police have rightly showed this witness as an eye witness in the charge sheet. Another instance is concerned, even if owner's surrendering the lorry driver is shelved, the evidence of PW.2 squarely establishes the involvement of the crime vehicle in the accident. Therefore, the claimants could discharge their burden of establishing the involvement of the crime vehicle. The Insurance Company is concerned, it did not adduce any evidence. It is true that it has to lead evidence to prove a negative fact of non-involvement of the lorry. However, it could do so by examining the owner and driver of the lorry. In the instant case, the Tribunal basing on the evidence available on record has rightly held that the crime vehicle was involved in the accident and there is no reason to differ with the same. In **Kunta Rajitha's** case (1 supra), under

similar circumstances this High Court negated the contention of the Insurance Company that crime vehicle was not involved in the accident.

10) In the result, this appeal filed by Insurance Company is dismissed with costs.

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

U. DURGA PRASAD RAO, J

Date: 05.08.2016

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