

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

MACMA.No.1565 of 2010

JUDGMENT:

This appeal is arising out of the order dated 28.06.2010 in O.P.No.372 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal (District Judge), at Nizamabad (for short, 'the Tribunal').

2. This is an appeal filed by the National Insurance Company Limited, the second respondent in O.P.No.372 of 2007. The said Original Petition was filed under Section 166(1)(c) of the Motor Vehicles Act, 1988 (for short, the Act) read with Rule 455 of the Andhra Pradesh Motor Vehicle Rules, 1989 (for short, 'the Rules'), claiming compensation of Rs.6,00,000/- on account of death of the deceased Shaik Zakiullah in the motor vehicle accident that took place on 13.11.2006.

3. The parties are hereinafter referred to as they are arrayed in the Original Petition.

4. The brief facts of the case are that on 13.11.2006, the deceased Shaik Zakiullah along with others was travelling in a Bolero jeep bearing No.AP 25M 9654, which was proceeding towards Nizamabad from Hyderabad. When they reached Komatpally Village Shivar on Hyderabad to Nagpur Road, at about 4.30 am., a lorry bearing No.AP 01T 4981 driven by its driver in a rash and negligent

manner at high speed, came in opposite direction on wrong side of the road and dashed against the jeep. In the accident, deceased sustained head injury, crush injuries and other multiple injuries all over the body and died on the spot. Four persons died and other persons sustained fractures and injuries. The petitioners, who are brothers and sister being legal heirs of the deceased, claimed compensation of Rs.6,00,000/-.

5. Respondent No.1, the owner of lorry had filed his counter denying the manner in which the accident had occurred. He stated that the accident occurred due to the rash and negligent driving of the driver of the jeep. It is further stated that by the date of accident, the jeep was insured with the second respondent, insurance company, and if any compensation is awarded, the same should be indemnified by the second respondent. It is further stated that by the date of accident, the lorry was roadworthy to ply and the driver of the lorry was possessing valid driving licence, and on these grounds, sought for dismissal of the claim petition.

6. Respondent No.2, insurance company, filed its counter denying the age, income and occupation of the deceased. It is stated that the accident might have occurred due to overloading of the jeep and due to rash and negligent driving of the driver of the jeep. It is further stated that the driver, owner and insurer of the jeep are necessary parties to the case to decide the negligence and as they are not impleaded, the petition is bad for non-joinder of

necessary parties. It is further stated that petitioners have not filed any record of police investigation including scene of offence Panchanama, Motor Vehicle Inspector's report and copy of insurance policy. It is also denied that the deceased was 25 years and was earning Rs.10,000/- per month by doing computer job work. It is further stated that if any compensation is granted against the insurance company, it is entitled to recover the same from the first respondent and sought protection under Sections 147, 149(2) and 170 of the Act. It is further stated that the driver of the lorry had no valid and effective driving licence at the time of the accident, and on these grounds, sought for dismissal of the petition.

7. The Tribunal examined three witnesses P.Ws.1 to 3 and marked Exs.A.1 to A.12 on behalf of the petitioners and examined R.W.1 and marked documents Exs.B.1 and B.2 on behalf of the respondents.

8. On consideration of the evidence, the Tribunal held issue No.1 in favour of the petitioners holding that the driver of the lorry had driven it in a rash and negligent manner. The Tribunal held issue No.2 also in favour of the petitioners awarding compensation of Rs.4,27,000/- as against the claim of Rs.6,00,000/-. Aggrieved by the impugned award passed by the Tribunal, the National Insurance Company Limited preferred this appeal.

9. Heard the arguments of Sri T.Ramulu, learned Standing Counsel for the appellant and Sri P.Radhive Reddy, learned counsel for respondent No.1.

10. Learned counsel for the appellant submitted that the Tribunal ought to have considered that there was contributory negligence on the part of the driver of the jeep. The manner in which the accident has occurred would clearly show that there was contributory negligence on the part of the jeep driver. The facts of the case, as mentioned in the FIR, would clearly show that the accident has occurred in one corner of the road. The police have also not filed the scene of accident to know exactly the manner in which the accident has occurred. It is further submitted that the jeep was overloaded than its permitted capacity. There were 11 persons travelling in the jeep at the time of the accident, whereas the capacity of the jeep was only 6+1. Due to overloading and inconvenience of the passengers, the accident must have occurred due to the contributory negligence on the part of the driver of the jeep.

11. Learned counsel for the appellant placed reliance on a decision of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. v. Meena Variyal¹ and a decision of this Court in Md.Iqbal v. Susheela Agarwal², and contended that in view of the facts of this

¹ 2007 ACJ 1284

² 2005 (2) ALD (NOC 111)

case, there is contributory negligence on the part of the drivers of both the vehicles, and therefore, the liability has to be apportioned between both the drivers of the vehicles.

12. Learned counsel for respondent No.1 submitted that the Tribunal has clearly held that there is negligence on the part of the driver of the lorry, keeping in view the facts and circumstances under which the accident has occurred. It is submitted that the jeep was totally damaged because of the impact of the accident and the jeep was turned towards Hyderabad side because of the force of the lorry, which dashed against the jeep. Considering all these facts, the Tribunal had rightly concluded that the accident occurred due to the rash and negligent driving of the driver of the lorry. Learned counsel for respondent No.1 placed reliance on a decision of the Hon'ble Supreme Court in *Meera Devi v. Himachal Pradesh Road Transport Corporation*³. He referred paras 9 and 10 of the said judgment, which read as under:

“9. It is not in dispute that the deceased was the only son of his parents i.e. the appellants herein. It is also not in dispute that when the collision between the scooter and the bus took place on the fateful day at a place known as Nabahi, the deceased was driving the scooter on his left side towards Sarkaghat from Mandi side. Admittedly, at the site where there was a curve, the bus driver did not blow the horn and the bus was being driven at a very high speed. All this is corroborated from the testimony of PW 3

³ (2014)

Lekh Ram, who is stated to be an eyewitness to the accident and not related to the deceased scooterist.

10. To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.”

13. Placing reliance on the decision in Meera Devi's case (3 supra), learned counsel for respondent No.1 submitted that in the above decision, the Hon'ble Supreme Court observed that where there was a curve and the bus driver did not blow the horn and the bus was being driven at a very high speed. In the present case, there is testimony of P.W.2, an eyewitness and injured to the accident and it clearly proves that there was no contributory negligence. It is further submitted that in the instant case, since the jeep was totally damaged, several persons in the jeep died and three persons received injuries and the jeep was turned to opposite side because of the impact of the dash given by the lorry, there is no contributory negligence on the part of the jeep driver.

14. On consideration of the arguments of both sides, and the material available on record, it is appropriate to refer to the findings

of the Tribunal to arrive at a conclusion with regard to contributory negligence in this case.

15. P.W.2, who is one of the injured, deposed that while she was travelling along with others in the Bolero jeep, one lorry bearing No.AP 01T 4981 came from opposite direction driven by its driver in rash and negligent manner and dashed against the jeep. She further deposed that the jeep was completely damaged and all the inmates of the jeep fell down and sustained injuries and four persons died on the spot.

16. On behalf of respondents, R.W.1, officer of the insurance company, was examined as a witness to speak about overloading of the jeep.

17. The Tribunal held that there is no evidence on record to show that the accident occurred due to rash and negligent driver of the driver of the jeep. The Tribunal, on the basis of evidence of P.W.2, being eye witness and injured in the accident, and also basing on the investigating report of the police, came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing No.AP 01 T 4981. As far as the findings of the Tribunal are concerned, and in the light of the evidence available on record, it is obvious that the accident occurred due to the negligence on the part of the driver of the lorry. This is not a fit case where the contributory negligence can be contributed to the

driver of the jeep for the reasons that the jeep was completely damaged and several persons in the jeep died and three persons sustained injuries. The Hon'ble Supreme Court in Meera Devi's case (3 supra), held that where the accident has occurred near a corner when the RTC bus did not blow the horn and gave a signal and the accident taken place, in such a situation, the contributory negligence cannot be contributed to the opposite vehicle. No doubt the jeep was overloaded and it was carrying on passengers more than its permitted capacity, but however, there is no evidence on record to show that the overloading of the passengers contributed for the accident. Since there is no evidence available on record to that effect, it cannot be considered that because the jeep was overloaded, it contributed to negligence on the part of the driver of the jeep. Therefore, there are no valid grounds to interfere with the findings of the Tribunal with regard to rash and negligent driving on the part of the driver of the lorry.

18. Learned counsel for the appellant submits that the claimants in this petition are two major brothers and one major sister of the deceased. Claimants 1 & 3 are the brothers, claimant No.2 is the sister. They are not the dependants on the deceased and therefore, they are not entitled to claim compensation on account of death of the deceased in the motor vehicle accident.

19. Learned counsel for the respondent No.1 submits that though the claimants are major brothers and sister of the deceased, they

are living with the deceased and they are dependants on the deceased brother, therefore, they are entitled to claim compensation on account of death of the deceased. The learned counsel also placed reliance on a Full Bench decision of this Court reported in Dr.Gangaraju Sowmini v. Alavala Sudhakar Reddy and another⁴, wherein it was held that the legal representatives of the deceased are entitled to make a claim petition. The relevant portion of said judgment reads as under:

“Before we proceed further, we refer to Rule 2(g) of the A.P.Motor Vehicles Rules, 1989. The said Rules are framed in exercise of powers conferred under Sections 28, 38, 95, 96, 107, 111, 138 and 176 of the Motor Vehicles Act, 1988. Rule 2(g) defines the word ‘legal representative’ as under:

“ *“Legal representative”* shall have the meaning assigned to it under Clause (11) of Section 2 of the Code of Civil Procedure, 1908 (Central Act 5 of 1908)”

From a reading of the provisions under Sections 140, 163-A and 166 of the Act, it is clear that the scheme of the Motor Vehicles Act, 1988, which is a beneficial legislation to the victims of motor vehicle accidents, imposes liability on the owner of the vehicle, under Section 140 of the Act, to pay compensation on the principle of ‘no fault’. Fixed amounts are prescribed in the aforesaid section for payment of such compensation even without any necessity of proving the fault. Similarly, Section 163-A of the Act provides for payment of compensation on structured formula basis to the legal heirs or the victims of the motor vehicle accidents. Under Section 165 of the Act, State Government is under

⁴ 2016(2) ALD 226(FB)

obligation to constitute Motor Accidents Claims Tribunals in such areas as may be notified, for adjudication of claims for compensation in respect of accidents involving death or fatal injury to persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. From explanation to Section 165 of the Act, which has got some bearing on the reference made, it is clear that claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles, include claims for compensation under Section 140 and Section 163-A. Section 166 of the Act provides for making an application for award of compensation arising out of an accident of the nature specified under Section 165(1). The provision under Section 166(1) expressly provides for making such application by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased. Section 166(1) further makes it clear that if all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. From a perusal of the said provision, it is clear that application for compensation can be made not only by dependant but by any legal representative of the deceased. Further, the word 'legal representative' is defined in the Rules by adopting the same meaning of 'legal representative' as defined under Section 2(11) of the Code of Civil Procedure. In the judgment in *Megjibhai Khimji's* case (supra), a Division Bench of Gujarat High Court has clearly held that the brother of a person who dies in a motor vehicle accident, is entitled to maintain claim petition under Section 110-A of the Motor Vehicles Act, if he is a legal representative of the deceased. Such view is approved by

the Honble Supreme Court also in *Montford Brother's* case (supra).

20. It is pertinent to note that the deceased is brother of the claimants. The parents of the deceased and the claimants died in the same accident. Therefore, the brother and sisters being the only legal heirs of the deceased have claimed compensation on account of his death. Since the motor vehicle act is a beneficial legislation; since the claimants are the only legal heirs of the deceased and there are no other legal heirs as the deceased has died as a bachelor, moreover, the parents of the claimants are also died in the same accident, they are entitled to claim compensation on account of death of their brother. If the deceased is alive, he would have contributed some amounts to the unmarried major brothers and sister. In view of the death of the deceased, they are deprived of their brother, who would have extended his help.

21. In view of the facts and circumstances of the case, since there is no rebuttal evidence adduced by the appellant to show that the claimants are not the dependants of the deceased, the contention of the claimants has to be accepted. The claimants are hardly aged below 25 years. Keeping in view the ratio laid down by the Full Bench of this Court, it can be safely concluded that even the major brothers and sister are entitled to claim compensation on account of death of their brother.

22. In view of the foregoing reasons, I am not inclined to interfere with the award passed by the Tribunal and consequently, the appeal is liable to be dismissed.

23. In the result, the appeal is dismissed. The order passed by the Tribunal in O.P.No.372 of 2007 is confirmed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDI SEVA SHYAM PRASAD, J

Date:23.03.2017
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