

HON'BLE SRI JUSTICE M.S.K.JAI SWAL

M.A.C.M.A.Nos.1139 & 1140 of 2010

COMMON JUDGMENT:

These two appeals arise out of two different O.Ps, i.e. O.P.Nos.102 & 103 of 2005, filed by the claimants who suffered loss of death and sustained injuries in the same accident said to have taken place on 05.12.2002, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District and Sessions Judge (FTC), Mahabubnagar (for short "the Tribunal"). One Sabavath Neji is said to have succumbed to injuries in the accident and her legal representatives filed O.P.No.103/2005 claiming compensation of Rs.3,50,000/-. In the same accident, one D.Sreenivasulu Goud sustained injuries and he filed O.P.No.102/2005 claiming compensation of Rs.1,00,000/- for the injuries sustained by him.

By Award, dated 07.04.2010, the Tribunal dismissed both the OPs on the ground that the necessary and proper parties have not been impleaded and also expressed suspicion about the manner in which the accident took place and also involvement of the vehicles. Aggrieved by the dismissal of OPs, the legal representatives of the deceased as well as the injured preferred these two appeals.

The brief facts of the case are that on 05.12.2002 at about 1 p.m while Sabavath Neji along with five others were proceeding from Wanaparthy to Ghanapur Mandal in a Jeep bearing registration No.AP-22-U-3271 and when reached the limits of Pamireddypally, another Jeep bearing registration No.AP-22-A-6233 came in a rash and negligent manner and dashed their Jeep from behind, due to which, their Jeep turned turtle and Sabavath Neji died on the spot and others sustained multiple injuries. The deceased was

aged 40 years and doing business in cloths and earning Rs.3,350/- per month, and the injured D.Sreenivasulu Goud was aged 35 years, working as Jeep driver and earning Rs.3,000/- per month by the date of accident.

The learned counsel appearing for the appellants in both the appeals submit that the Tribunal erred in dismissing the claim petitions holding that the petitions are bad for non-joinder of owner and insurer of the Jeep bearing registration No.AP-22-U-3271, therefore, the learned counsel requested that the matters be remanded to the Tribunal for fresh disposal.

Heard both sides and perused the material on record.

It is not disputed that on 05.12.2002 at about 1 p.m the accident took place, which resulted in the death of one Sabavath Neji and injuries to several people including D.Sreenivasulu Goud. In both the cases, complaints were filed to the police immediately after the accident. For the accident, one Nenavath Lalitha, W/o.Chandu lodged complaint with the jurisdictional police. A perusal of the contents of the charge sheet show that the accident took place at the time when the complainant, the deceased, the injured and others were traveling in a Jeep bearing registration No. AP-22-U-3271. It is alleged that the driver of the said Jeep by name Md.Pasha drove the vehicle in a rash and negligent manner and lost control over the it, due to which, the Jeep turned turtle. In the complaint, absolutely there is no reference about the involving of another Jeep bearing registration No.AP-22-A-6233 which is said to be driven by one Pinnamsetty Krishna.

During course of investigation, as noticed from the charge sheet, it appears that the owner of the Jeep bearing registration No.AP-22-A-6233 himself went to the police station and informed that the accident took place due to rash and negligent driving by the driver of the Jeep bearing registration No.AP-22-A-6233 i.e., Pinnamsetty Krishna.

Even if the inconsistent stand that is noticed above is taken into consideration, there was involvement of Jeep bearing registration No. AP-22-U-3271, since the complaint specifically mentioned that the deceased and the injured were traveling in the Jeep bearing registration No. AP-22-U-3271 and the accident took place due to rash and negligent driving of its driver, by name, Md.Pasha. Neither the owner of the said Jeep nor the Insurance Company, if any, of the said Jeep has been made as party in either of the claim petitions.

The claim petition is filed against the owner and insurance company of the Jeep bearing registration No.AP-22-A-6233, which as already stated, as per the complaint lodged at the earliest point of time, is not at all involved in the accident. Therefore, the Tribunal having noticed the discrepancies observed that the claim petitions were bad for non-joinder of necessary parties, namely, the owner and insurer of the Jeep bearing registration No.AP-22-U-3271, in which vehicle actually the injured and the deceased along with others were traveling at the relevant point of time and due to whose negligence the accident took place.

During the course of hearing, learned Counsel appearing on either side have taken me through the entire material on record. As already stated, in the earliest complaint and charge sheet, there is no reference, whatsoever, to the vehicle bearing No.AP-22-A-6233 which is insured with the second respondent herein and owned by one K.Manohar Reddy (PW 3 in OP.No.102/2005 and PW 4 in OP.No.103/2005). When the accident took place on 05.12.2002, only on 26.06.2003, according to the charge sheet, the driver of the vehicle bearing No.AP-22-A-6233 viz., one D.Srinivas Goud (PW 1 in OP.No.102/2005 and PW 2 in OP No.103/2005) came to police station and volunteered that it is his vehicle that caused the accident due to

his negligence. It is in the evidence of the owner of the vehicle bearing registration No.AP-22-A-6233 and its driver that on the next day of the accident itself, the driver informed the owner of the vehicle about the involvement of the vehicle bearing registration No.AP-22-A-6233 in the accident and the owner of the vehicle deposed that he asked the driver to go and inform the same to the police. The owner of the vehicle admits that he did not inform the said aspect to the police and one or two months afterwards the police came and enquired from him. Similarly, it is in the evidence of the driver that four months after the accident, he himself went to the police station and informed that the accident took place due to his negligence in driving the vehicle bearing registration No.AP-22-A-6233. This part of the evidence of the driver, the owner and the recitals of the charge sheet which are self-contradictory creates any amount of doubt about the involvement of the vehicle bearing registration No.AP-22-A-6233 which was insured with the second respondent. There is sufficient substance in the submission of the learned Counsel appearing for the Insurance Company that since the vehicle bearing registration No.AP-22-U-3271 in which the deceased and injured were travelling was not validly insured, after a gap of more than four or five months, the vehicle bearing registration No.AP-22-A-6233 has been planted with an intention to help the claimants to claim compensation. The Tribunal has taken into consideration the said aspect and upon proper appreciation thereof held that the evidence on record do not establish the involvement of the vehicle bearing No.6233 which was insured by the 2nd respondent as having caused the accident. The accident appears to have taken place due to rashness and negligence on the part of the driver of the vehicle bearing registration No.AP-22-U-3271 due to which it turned turtle but not due to involvement of any other vehicle, more particularly, the vehicle

bearing registration No.AP-22-A-6233 which was insured by the 2nd respondent.

Upon carefully perusing the material on record, I see no substance in both the appeal and they are liable to be dismissed.

In the result, both the appeals are dismissed.

M.S.K.JAI SWAL, J

Date: August, 2017
Dsr/smr

