

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

MACMA.No.1561 of 2010

JUDGMENT:

This appeal is arising out of the order dated 29.06.2010 in O.P.No.377 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.377 of 2007. The said Original Petition was filed by injured Shaik Safiullah under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act), claiming compensation of Rs.8 lakhs on account of the injuries sustained by him in the motor vehicle accident that took place on 13.11.2006.

3. The parties are referred in this appeal as they are arrayed in the Original Petition.

4. The brief facts of the case are that on 13.11.2006, the petitioner along with others was travelling in a Bolero jeep bearing No.AP25M 9654 from Hyderabad towards Nizamabad, and when they reached Komatpally Village Shivar on Hyderabad to Nagpur Road, at about 4.30 am., a lorry bearing No.AP01T 4981 driven by its driver in a rash and negligent manner at high speed, came from opposite direction on wrong side of the road and dashed against the jeep. In the accident, Shaik Khairullah, Gousia Begum, Shaik Zakiulla, Safia Begum and Shaik Fouzdar Khan died. In the

accident, the petitioner sustained head injury, skull fracture, face disfiguration, jaws fractures, comminuted fractures to left leg and other multiple fractures and injuries all over the body. Immediately, he was shifted to Yashoda Hospital, Somajiguda, Hyderabad. The petitioner underwent head surgery. He incurred an amount of Rs.5 lakhs towards medical expenditure and special diet. The petitioner stated in the claim petition that due to the head injury, he lost his memory power, and due to other injuries and fractures, he is unable to move from the bed. He claimed compensation of Rs.55,00,000/- under various heads, but restricted his claim to Rs.8 lakhs.

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 petitioner. It has denied the allegation that the petitioner had incurred Rs.5 lakhs towards medical expenditure and special diet. 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 as they are not impleaded. The petition is bad for non-joinder of necessary parties. It is further stated that petitioner has 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 petitioner was 19 years and was earning Rs.10,000/- per month as computer job worker. 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.13 and Ex.C.1 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 petitioner 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 petitioner awarding compensation of

Rs.4,91,402/- as against the claim of Rs.8 lakhs. Aggrieved by the impugned award passed by the Tribunal, the National Insurance Company Limited preferred this appeal.

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

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. 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 the inconvenience of the passengers overloading, the accident must have occurred due to the contributory negligence on the part of the driver of the jeep. It is further submitted that the quantum of compensation awarded by the Tribunal is also excessive with regard to pain and suffering.

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 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 with which the lorry 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 Corporation³. 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

¹ 2007 ACJ 1284

² 2005 (2) ALD (NOC 111)

³ (2014)

blow the horn and the bus was being driver at a very high speed. All this is corroborated from the testimony of PW 3 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, and when there is testimony of P.W.3, an eyewitness to the accident, it clearly proves that there was no contributory negligence. It is further submitted that in the instant case, since the jeep was totally damaged and 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.

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.1, Shaik Safiullah, who is the injured, deposed that while he was travelling along with others in the Bolero jeep, one lorry bearing No.AP01T 4981 came from opposite direction driven by its driver in rash and negligent manner and dashed against the jeep. He further deposed that the jeep was completely damaged and all the inmates of the jeep fell down and sustained injuries.

16. On behalf of respondents, R.W.1, officer of the insurance company, was examined as a witness to speak about the 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.1, being a victim 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.AP01T 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.

The reasons are being that the jeep was completely damaged and several persons in the jeep died and three persons were injured. 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 was 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 findings of the rash and negligent driving on the part of the driver of the lorry.

18. Learned counsel for the appellant submitted that the Tribunal has awarded an amount of Rs.1 lakh towards pain and suffering which was on higher side and sought for reducing the same.

19. The tabular form given below would show the particulars of amounts awarded by the Tribunal.

Sl.No.	Name of Head	Compensation Awarded by Tribunal
01.	Medical expenses	Rs.2,31,402/-
02.	Pain and suffering	Rs.1,00,000/-
03.	Permanent partial disability	Rs.1,00,000/-
04.	Future medical expenses	Rs.50,000/-
05.	Transportation charges	Rs.10,000/-
	TOTAL	Rs.4,91,402/-

20. On consideration of the nature of injuries and the treatment undergone by the first respondent/injured, and in the light of the evidence of medical officer, P.W.3, Doctor, the compensation of Rs.1 lakh awarded by the Tribunal towards pain and suffering and under all other heads, do not require any interference.

21. In view of the foregoing reasons, I do not see any valid grounds to interfere with the award passed by the Tribunal, and consequently, the appeal is liable to be dismissed.

22. In the result, the appeal is dismissed. The order passed by the Tribunal in O.P.No.377 of 2007 is confirmed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDI SEVA SHYAM PRASAD, J

Date: 22.03.2017
TJMR