

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

MACMA.No.1564 of 2010

JUDGMENT:

This appeal is arising out of the order dated 29.06.2010 in O.P.No.376 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.376 of 2007. The said Original Petition was filed by injured Smt Noorjahan Begum 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.2,00,000/- on account of the injuries sustained by her 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 petitioner 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, the petitioner sustained fractures to right thigh and both bones of right leg, injuries all over the body apart from injuries to left leg and head. Immediately, after the accident, the petitioner was shifted to Government Hospital, Ramayampet, thereafter she was shifted to Maithri Hospital, Nizamabad, where her right leg was operated, rods were also inserted. She incurred an amount of Rs.1,50,000/- towards medical expenditure and special diet. In the said accident, Shaik Khairullah, Gousia Begum, Shaik Zakiulla, Safia Begum and Shaik Fouzdar Khan died. It is further stated in the claim petition that due to injuries and fractures, she was unable to move from bed, she cannot walk and work and unable to attend her regular duties. She claimed compensation of Rs.23,50,000/- under various heads, but restricted her claim to Rs.2,00,000/-.

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 petitioner. It has denied the allegation that the petitioner had incurred Rs.1,50,000/- 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 and 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 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.14 on behalf of the petitioner 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 also held issue No.2 in favour of the petitioner awarding compensation of Rs.1,15,000/- as against the claim of Rs.2,00,000/-. 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 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 the 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. It is further submitted that the quantum of compensation awarded by the Tribunal is also excessive with regard to pain and suffering and permanent disability.

11. Learned counsel for the appellant placed reliance on a decision of the Hon'ble Supreme Court in *Oriental Insurance Co. Ltd. v. Meena Variyal*¹ and a decision of this Court in *Md.Iqbal v. Susheela Agarwal*², 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 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

¹ 2007 ACJ 1284

² 2005 (2) ALD (NOC 111)

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 collusion 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 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

³ (2014)

bus was being driven at a very high speed, and when there is testimony of P.W.1, injured and 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, who is the injured, deposed that while she was travelling along with others in the Bolero jeep, one lorry bearing No.AP 01T 4981 driven by its driver came from opposite direction 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 and four persons died on the spot.

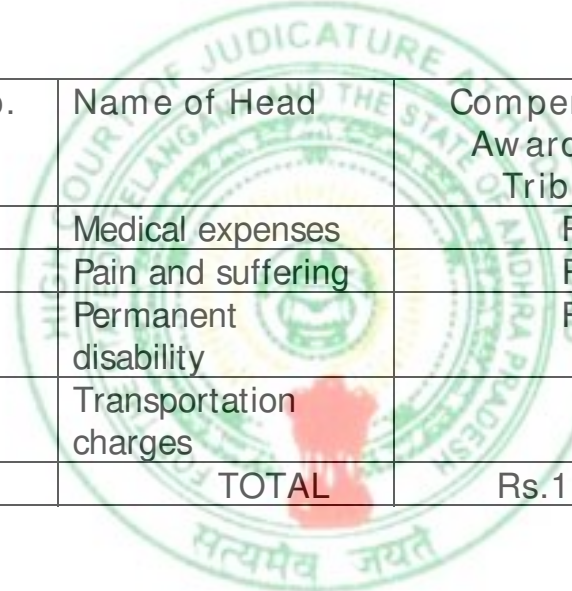
16. On behalf of respondents, R.W.1, officer of the insurance company, was examined as a witness to speak about the overloading of the jeep.

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 for the reasons 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 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 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.1,00,000/- towards pain and suffering and permanent disability, 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.10,000/-
02.	Pain and suffering	Rs.50,000/-
03.	Permanent disability	Rs.50,000/-
04.	Transportation charges	Rs.5,000/-
	TOTAL	Rs.1,15,000/-

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.1,00,000/- 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.376 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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