

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

M.A.C.M.A.Nos.1568/ 2010 & 636/ 2011

JUDGMENT:

These two appeals arise out of the same accident and therefore, they are being disposed of by this common judgment.

Both these appeals are filed by the insurance company. MACMA No.1568/2010 is filed questioning the award of the learned Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge (FTC), Ananthapur (for short "the Tribunal), dated 15.05.2009, passed in O.P.No.337/2007. MACMA No.636/2011 is filed questioning the award of the learned Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge (FTC), Ananthapur (for short "the Tribunal), dated 12.05.2009, passed in O.P.No.577/2007.

The fact is that on 16.05.2007 at about 9.30 a.m the accident took place involving a Tempo Van bearing registration No.AP-02-U-1414 and an Auto bearing registration No.AP-02-W-2875. The accident took place when the Auto turned turtle and immediately the Tempo Van hit against the Auto, resulting in death of three persons, traveling in the Auto. The legal representatives of the three deceased filed three different O.Ps, claiming compensation. O.P.Nos.337/2007 and 577/2007 were filed on the file of the learned Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge (FTC), Ananthapur, whereas the 3<sup>rd</sup> O.P.No.541/2007 was filed on the file of the VI Additional District Judge (FTC), Gooty.

While the O.P.Nos.337/2007 and 577/2007 were disposed of on 15.05.2009 and 12.05.2009 respectively, O.P.No.541/2007 was disposed of on 15.05.2009. The Tribunals have elaborately discussed the oral and documentary evidence on record and held that there was contributory

negligence on the part of the Auto which turned turtle, as well as the driver of the Tempo Van and therefore, holding that there is contributory negligence, apportioned the liability on both the vehicles. However, while doing so, an error has crept in to the following effect.

In O.P.No.337/2007, the learned Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge (FTC), Ananthapur, vide Award dated 15.05.2009, apportioned the contributory negligence @70% on the driver of the Tempo Van and @30% on the Auto driver.

In O.P.No.577/2007, the same learned Chairman, vide Award dated 12.05.2009, apportioned the contributory negligence @80% on the driver of the Tempo Van and @20% on the Auto driver.

Similarly, in O.P.No.541/2007, the other court, viz., the learned Chairman, Motor Accident Claims Tribunal-cum-V Additional District Judge (FTC), Ananthapur, vide Award dated 15.05.2009, apportioned the contributory negligence @50% each on the driver of the Tempo Van and the driver of the Auto driver, and the same has become final as no appeal is preferred challenging said ratio of negligence.

In all three OPs, apportionment of contributory negligence between two vehicles should be equal, viz., @50% each and hence these appeals are liable to be allowed.

Since the other aspects about the findings of the Tribunals with regard to the rashness and negligence on the part of the drivers of the offending vehicles and the quantum of compensation awarded are not being challenged, they are not being adverted to in detail.

In view of the above, these two Appeals are allowed, fixing the contributory negligence @50% each between both vehicles involved in the accident, resultantly, both the Insurance Companies equally liable to pay the compensation awarded by the Tribunals to the claimants.

Pending miscellaneous applications, if any, shall stand closed in consequence.

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M.S.K.JAI SWAL,J

Date: 22.06.2017  
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