

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A.No. 2572 OF 2009.

JUDGMENT:

1. The appellant/Oriental Insurance Company Limited, aggrieved by the Award dated 18.10.2007 passed in O.P.No.431 of 2004 by the Motor Accident Claims Tribunal-cum-learned I Additional District Judge, West Godavari District, Eluru, preferred present appeal on the grounds that the Tribunal erred in not considering the evidence of R.W.1 who was the Investigating Officer in proper perspective and brushed aside his (R.W.1) evidence holding that there is no evidence on record to prove that the auto driver himself was responsible for the cause of accident; that the Tribunal failed to look into the contributory negligence on the part of the auto driver when the accident occurred due to composite negligence; that the Tribunal erred in granting compensation of Rs.75,000/- towards grievous and simple injuries suffered by the first respondent/claimant without any basis and further that the Tribunal ought to have observed that the alleged auto was carrying four persons besides the driver in violation of the M. V. Act and rules made therein.

2. On the other hand, learned Counsel for the first respondent-contents that the accident occurred due to rash and negligent driving of the lorry bearing registration No.AAK 5945 by

its driver-second respondent. He further submits that the very FIR presented by the injured witness shows that due to rash and negligent driving of the lorry bearing Registration No. AAK 5945 the accident occurred and there is no contributory negligence on the part of the auto driver and at the instance of second respondent-driver of the lorry, the charge sheet was filed against the auto driver.

3. Now the point that arises for consideration is whether the impugned award of the Tribunal suffers from any legal infirmities warranting interference by this Court.

4. The case of the first respondent/claimant is that on 3.1.2003 at about 3.30 PM he started driving the auto bearing registration No.AP 37 V 2293 at Nallajerla with passengers in order to go to Tadepallygudem and while proceeding on the left side of the road by observing all traffic rules and when reached outskirts of Tadepallygudem at about 4.00 PM, the lorry bearing registration No. AAK 5945 driven by the second respondent in rash and negligent manner, came in opposite direction and dashed and dragged the auto into road side margin. Immediately after the accident, P.W.1 was shifted to Government Hospital, Tadepalligudem and from there to Abhaya Emergency Hospital, Rajahmundry on the same day.

5. The evidence of P.W.1 is that he was working as driver on the auto bearing registration AP 37 V 2293 belonging to the third respondent. On 3.1.2003 at about 3.30 PM while he was

proceeding with the said auto with passengers and when reached outskirts of Tadepalligudem, the lorry bearing Registration No. AAK 5945 came in opposite direction with high speed and in rash and negligent manner without following the traffic rules and dashed the said auto.

6. There was no cross examination of P.W.1 on the point that he (P.W.1) was working as driver of auto bearing No. AP 37 V 2293, to which third respondent was the owner and involvement of lorry bearing registration No. AAK 5945 in the accident at 4.00 PM of 3.1.2003 in the out skirts of Tadepallygudem and Nallagerla road.

7. The evidence of P.W.1 is consistent through out and inspires confidence. Ex.A.1 is the copy of FIR, which was registered at the instance of one Kurakula Nageswara Rao. It is nothing but the statement of said Kurakula Nageswara rao which was recorded by Sri Vijay Kumar, Head Constable, Tadepalligudem, after returning from hospital.

8. The complainant in the statement before the Station House Officer specifically stated with regard to involvement of lorry bearing No. AAK 5945. The said statement of complainant which was registered as FIR–Ex.A.1 was recorded on 3.1.2003 by P.Vijay Kumar, H.C.No. 1172 of Tadepalligudem Town Police Station as per Ex. A.4-charge sheet. During the cross-examination of R.W.1, he admitted that according to Ex. A.1 statement, the

injured eye witness gave the said statement stating that the accident occurred due to rash and negligent driving of the lorry bearing No. AAK 5945 by its driver and the auto which belongs to the third respondent was badly damaged and the driver of the said auto sustained grievous injuries. The second respondent was the owner and driver of the lorry bearing No. AAK 5945 at the time of accident. Further R.W.1 during his cross examination admitted that there was no relationship between the complainant and driver of the auto bearing No. AP 37 V 2293/claimant/P.W.1 or owner of the auto—third respondent.

9. There is a suggestion to R.W.1 that he has prepared Exs. X.1 and X.2 in the police station only to accommodate the driver-cum-owner of the lorry bearing No.AAK 5945 and to file a false charge sheet-Ex.A.4. R.W.1-Investigating Officer filed charge sheet against P.W.1—driver of the auto alleging that witnesses 4 to 6 examined by him on 4.1.2003 stated before him that the auto driver/P.W.1 drove the auto bearing No. AP 37V 2293 in rash and negligent manner and that on seeing the scooterist, the auto driver perturbed and turned his auto to his right side without observing lorry bearing No. AAK 5945 coming in opposite direction and dashed against the lorry. Accordingly the auto driver was responsible for the cause of accident.

10. R.W.2 is none other than the legal assistant in the second respondent-Insurance Company. During his cross

examination, he admitted that Ex.A.1 was registered basing on the report given by the injured person who travelled in the auto. Further he admits that the appellant-Insurance Company did not appoint any investigator to know as to who was negligent for the cause of accident and that he has no personal knowledge about the accident. From above admission of R.W.2, it is clear that R.W.2 is not a direct witness to the accident.

11. From the evidence of R.Ws.1 and 2, it is clear that R.W.1 took up investigation on 4.1.2003 in the crime registered vide FIR–Ex. A.1 on 3.1.2003. R.W.1 is not a direct witness to the accident. He is only an investigating officer who has no personal knowledge of the accident. He only recorded the statements of witnesses 4 to 6 who stated before him. According to R.W.1 and statement of witnesses 4 to 6 in Ex. A.4-charge sheet, accident occurred due to rash and negligent driving of the auto by P.W.1 himself. There were no direct witness to the accident. For the reasons best known to the appellant-Insurance Company and respondents 2 to 4, they did not choose to examine the witnesses 4 to 6 who were stated to be examined by R.W.1 vide Ex.A.4 to rebut the evidence of P.W.1. As per the Investigating Officer, the accident took place due to rash and negligent driving of the auto by driver-P.W.1. However, he has not produced witnesses whom he examined and spoke before him that the accident was due to rash and negligent driving of P.W.1. Further he has not placed any material or placed any particulars, data etc for his conclusion that

the accident was resulted due to rash and negligent driving of the auto by P.W.1 and on account of overloading passengers therein. Hence, there was no evidence adduced by the appellant-Insurance Company, respondents 2 to 4 and R.Ws. 1 and 2 and direct witnesses to the accident as to how R.W.1 concluded that the accident was due to the rash and negligent driving of the auto by P.W.1. Hence his evidence has to be excluded from the consideration on the ground that the same is hearsay evidence and also on the ground that the same is based on no evidence.

12. The further contention of the appellant-Insurance Company is that the accident occurred due to over loading of passengers in the auto. Absolutely there is no iota of evidence produced by the appellant to prove that the root cause of the accident was over loading of passengers in the auto. Absolutely there is no evidence that more than the permitted capacity of passengers were allowed to travel in the auto and that was the root cause for the accident. In the absence of any such evidence, it cannot be believed that over loading of passengers was only the cause for the accident.

13. The further contention of the appellant is that the amount of compensation awarded by the Tribunal is exorbitant. The Tribunal having considered the oral evidence of P.Ws. 1 and 2 and documentary evidence at Exs. A.1 to A.7 & Exs. B.1 and B.2 Insurance Policy, rightly came to the conclusion that the first

respondent/claimant sustained 17 injuries, out of which, Injury Nos. 14 and 15 are grievous and Injury Nos. 1 to 13, 16 and 17 are simple in nature and accordingly granted compensation at the rate of Rs.3,000/-per each simple injury and Rs.15,000/- per each grievous injury, Rs.10,000/- towards pain and suffering, Rs.1,000/- towards hospitalization, Rs.2,500/- towards loss of earnings and Rs.25,000/- towards medical expenses. Thus in all, Rs.1,13,5000/- was awarded with subsequent interest at 7.5% per annum from the date of the claim petition till deposit, holding that appellant-Insurance Company and second respondent are jointly and severally liable to pay the same within one month from the date of the Award. It was observed therein that by virtue of the Insurance policy, the appellant-Insurance Company has to indemnify the liability of the second respondent-owner-cum-driver of the lorry. Accordingly, the appellant and second respondents are held jointly and severally liable to pay the compensation.

14. Accordingly the findings of the Tribunal are legal, valid and do not suffer from any legal infirmities warranting interference by this Court.

15. The appeal is dismissed, with costs, confirming the Award dated 18.10.2007 passed in O.P.No.431 of 2004 by the Motor Accident Claims Tribunal-cum-learned I Additional District Judge, West Godavari District, Eluru.

16. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE N. BALAYOGI.

Date 25th March, 2017.
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