

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A No. 566 of 2012

JUDGMENT:

This appeal is arising out of the order dated 30.11.2011 in M.V.O.P.No.1240 of 2009 on the file of the Motor Vehicles Accident Claims Tribunal—cum—XIV Additional Chief Judge, (Fast Track Court), City Civil Court, Hyderabad, (for short, 'the Tribunal').

2. Brief facts of the case are that on 29.08.2009, at about 4:45 PM, while the petitioner was proceeding as pillion rider on Honda Unicorn motorcycle bearing No.AP-24N-9279 along with two passengers by name B. Kistaiah as rider and B. Mallesh as other pillion rider from Mothkur side towards Paladugu village side on the extreme left side of the road. When they reached near Katamaiah temple, near Mothkur village outskirts, Nalgonda District, the driver of APSRTC bus bearing No. AP-10Z-6745 of Suryapet Depot, Nalgonda District, drove the bus at a high speed in a rash and negligent manner and lost control over the vehicle and hit the motorcycle of the petitioner. The rider, the petitioner and the other pillion rider fell down and sustained grievous injuries. The petitioner was shifted to a private hospital in Mothkur and after first aid, he was shifted to Gandhi Hospital, Secunderabad and thereafter shifted to Pavan Sai Hospital for better treatment, where he was admitted as inpatient. The police registered a case in Crime No.59/2008 for the offence punishable under Section 338 IPC, against the driver of the APSRTC bus. Due to the grievous injuries received in the accident, the petitioner sustained permanent disability and unable to attend to his work. Therefore, he claimed compensation of Rs.4,00,000/- against respondent No.1-APSRTC rep. by Managing Director, RTC X Roads, Musheerabad, Hyderabad; and

respondent No.2-APSRTC, Depot Manager, Suryapet Depot, Nalgonda District.

3. Respondents 1 and 2 filed their counter putting the petitioner to strict proof of his age, income, occupation, the manner in which the accident occurred, and the nature of treatment undergone by him.

4. The Tribunal, on consideration of the evidence of witnesses PWs.1 and 2, and the documents Exs.A1 to A11, held Issue No.1 in favour of the claimant, holding that the accident occurred due to rash and negligent driving by the driver of RTC bus, and in issue No.2 held in favour of claimants and awarded compensation of Rs.4,00,000/- under pecuniary and non-pecuniary damages.

5. Aggrieved by the award passed by the Tribunal, the APSRTC filed this appeal, mainly contending that there is contributory negligence on the part of the rider of the motorcycle.

6. The point for consideration in this appeal is:

- (i) Whether there is contributory negligence on the part of the rider of the motorcycle?

7. Heard the arguments of learned counsel for the appellants.

8. It is contended by the learned counsel for the appellants-RTC that there is contributory negligence on the part of the rider of the motorcycle and the accident occurred due to discomfort and inconvenience caused to the rider of the motorcycle as there were three persons travelling on the motorcycle at the time of accident.

9. Learned counsel for the respondent-claimant submitted that the appellant has not pleaded in his counter before the Tribunal that the accident occurred due to the discomfort and inconvenience caused to the rider of the motorcycle due to triple riding. In the absence of any such plea before the Tribunal in that regard, the appellant cannot contend that there is contributory negligence on the part of the rider of the motorcycle.

10. Learned counsel for the respondent-claimant placed reliance on the decision in United India Insurance Co. Ltd., Patancheru Medak District v. Chendri Ramaiah and others¹. He referred to paragraph 4 of the judgment which reads as under:

“4. Having regard to the above two pronouncements of this Court, it follows that finding as to negligence or contributory negligence has to depend on evidence on record. It is only in the absence of any evidence on record, the question of drawing presumptions under law or on facts can be resorted to. Evidence on record cannot be brushed aside placing reliance on probabilities and presumptions. Evidence in that particular case is the first criterion while considering the issue regarding negligence or contributory negligence. If evidence on record is scrutinized in the light of the above pronouncements of this Court, it is evident that there is sufficient evidence on record let in by the claimants to prove negligence on the part of D.C.M. van driver. PW2 is cashier in Isnapur filling station, Muthangi in front of which petrol pump the accident took place. It is his categorical evidence that the accident occurred due to fault of D.C.M. van driver as he drove the vehicle in rash and negligent manner and dashed the motorcycle in wrong direction. It is not a case where there was head on collision between two vehicles on middle of the road. D.C.M van driver drove the same towards wrong side and dashed the opposite motor cycle killing three riders on the motor cycle on the spot. This is not a case where due to triple riding, driver of the motor cycle became cramped and could not control the vehicle due to discomfort or inconvenience because of triple riding. Evidence on record

¹ 2011 (2) ALD 3

amply proved that the fault was with D.C.M. van driver only and that there was no fault on the part of motor cycle rider/driver and that for no fault of the motor cycle driver, D.C.M van came on to wrong side and dashed the motor cycle which was going in proper direction. Thus, the lower Tribunal was right in holding that the accident took place due to rash and negligent driving of D.C.M van driver. The motor cycle rider/driver on which three deceased persons were traveling did not contribute any negligence for this accident. This accident was not due to triple riding of the motor cycle, but due to fault as well as rash and negligent driving on the part of the D.C.M van driver.”

11. Placing reliance on the above decision, the counsel for the respondent-claimant submitted that the facts of the present case are similar to the facts in Chendri Ramaiah (1 supra), and that there is no contributory negligence on the part of the rider of motorcycle in this case.

12. The learned counsel for the appellants-RTC *inter alia* contended that except the evidence of PW1 who is the injured eyewitness, no other witness was examined to prove rash and negligence on the part of the driver of RTC bus. PW1-injured eyewitness is an interested witness and, therefore, his evidence cannot be taken into consideration to prove rash and negligent driving by the driver of the RTC bus.

13. Learned counsel for the respondent-claimant cited another decision in Karri Nagapadma Sridevi v. Oriental Fire and General Insurance Company Ltd.,² paragraph 6 of which reads as under:

“6. It is a settled proposition that whoever alleges the act of rash and negligent driving on the part of the other, has to prove the same by adduction of satisfactory evidence. In the instant case, PWs. 1 and 2 are not eye-witnesses and the minor child, who sustained injuries and who was being carried in arms by her late mother Syamala was only 5 months old and then we

² 2003 ACJ 671

have got only the evidence of PW.3, who was proceeding on the same road on bicycle and in fact, he was overtaken by Luna Moped being driven by late K. Veera Reddy just before the accident. The evidence of PW.3 - the lone eye-witness - was accepted by the Motor Accidents Claims Tribunal. The said witness has clearly and categorically stated that he was going on his bicycle on the left side of road-cum-rail bridge of Rajahmundry towards Kovvur and Luna Moped being driven by late Veera Reddy with his wife late Syamala being the pillion rider holding the minor child - Nagapadma Sreedevi, has overtaken his bicycle and then proceeded in front of him on the left side of the road and slowly and that the lorry came in the opposite direction from Kowur side and was being driven in rash and negligent manner and dashed against the Luna Moped resulting in fatal injuries to late Veera Reddy and late Syamala, who died on the way to hospital and injuries to the minor child. There is no rebuttal to his evidence and it is surprising that the Motor Accidents Claims Tribunal has just assumed contributory negligence on the part of the deceased - Karri Veera Reddy - on the ground that "the collision could have avoided if any of the two drivers of the vehicles were prudent and cautious. Therefore, I feel that the occurrence is due to the contributory negligence of both drivers of the two motor vehicles and I find issue No. 1 in all the OPs accordingly". This finding has been just affirmed by the learned single Judge of this Court in CMA Nos.974 of 1027 of 1986 as a matter of course without even probing into the evidence of PW.3. PW3's evidence is so clear, consistent and cogent that there was absolutely no fault on the part of late Veera Reddy while driving the Luna Moped and that it was the lorry, which was coming in the opposite direction at a high speed and rash and negligent manner, dashed against the Luna Moped resulting in injuries to the child and deaths of her parents. The assumption of contributory negligence is casual and baseless. There cannot be any assumption as against the clear and cogent eye-witness account of PW 3 whose testimony was not at all doubted. In fact, contributory negligence has to be proved after the negligence of respondent No. 3 is proved and Respondent No. 3-Driver remained ex parte and there is no rebuttal evidence at all to come to the conclusion of contributory negligence. Contributory negligence is a matter of proof and not an assumption. In view of the above, the finding of contributory

negligence recorded by the Motor Accidents Claims Tribunal and affirmed by the learned single Judge is set aside and it is held that the accident occurred due to the rash and negligent driving of the lorry by the respondent No. 3-Driver.

14. Placing reliance on the above decision, it is submitted that contributory negligence is a matter of proof and not assumption; and the account of an eyewitness has to be believed with regard to rash and negligence on the part of the driver of the crime vehicle.

15. On consideration of the evidence of PW1 and the documents Exs.A1 and A3 and, in the light of the decision in Karri Nagapadma Sridevi (2 supra), it is obvious that contributory negligence cannot be inferred from the circumstances nor there can be any assumption in that regard. The evidence that is on record has to be appreciated to come to a conclusion as to whether there is any contributory negligence on the part of the rider of the motorcycle or not.

16. It is an admitted fact that there was triple riding of the motorcycle. It is not necessary that, in all cases of triple riding of motorcycle, there should be contributory negligence in case of an accident. There must be a specific pleading to the effect that triple riding has contributed to the accident and therefore there is contributory negligence on the part of the rider of the motorcycle. If such a specific plea is not taken and established with cogent and convincing evidence, contributory negligence cannot be said to have been proved against the rider of motorcycle.

17. In this case, no witness was examined on behalf of the appellants-RTC to prove contributory negligence on the part of rider of the motorcycle. Further, no plea to that effect was taken before the Tribunal

by the appellants-RTC. The evidence that is available on record is that of PW1-claimant, who is the injured eyewitness. PW1 has clearly spoken about the manner in which the accident has occurred.

18. In view of the evidence available on record, it is evident that the accident occurred due to rash and negligence on the part of the driver of RTC bus, and, therefore, the finding of the Tribunal in that aspect does not require interference.

19. Learned counsel for the appellants-RTC further contended that the owner and insurer of the motorcycle are not made parties to the claim petition and, therefore, the petition is bad for non-joinder of necessary parties.

20. Since the Tribunal has held that the accident occurred due to the rash and negligent driving by the driver of the RTC bus, there is no need to add the rider and owner of the motorcycle as parties to the petition.

21. In view of the foregoing reasons, I do not see any merit in the appeal and the appeal is liable to be dismissed.

22. In the result, the appeal is dismissed, and the judgment of the Tribunal in O.P.No.1239 of 2009 is confirmed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDI SEVA SHYAM PRASAD, J

21st March, 2017

KSM

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD



M.A.C.M.A No. 566 of 2012

21st March, 2017

ksm