

HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.787 OF 2006

JUDGMENT:

This appeal is filed by the appellant/respondent No.4 aggrieved by the award of compensation of Rs.5 lakhs to claim petitioners in O.P.No.159 of 2001 on the file of the Motor Accidents Claims Tribunal-cum-I Addl. District Judge, Anantapur, by award dated 19.01.2006.

2. Appellant/respondent No.4 before the Tribunal, insurer of the lorry bearing No.AP-01-T-9513, filed this appeal, contending that there was no rashness and negligence on the part of the driver of the said lorry and the accident occurred due to the rash and negligent driving of the van bearing No.AP-02-T-2325; as such, award of compensation of Rs.5 lakhs is excessive; the tribunal made the appellant to pay the compensation along with the owner and insurer of the van bearing No.AP-02-T-2325, which is erroneous. P.W.2, in his cross-examination, stated that, had the driver of the van bearing No.AP-02-T-2325 did not overtake the R.T.C., bus, the accident would not have occurred; the cross-examination of P.W.2, reveals that there is no rashness and negligence on the part of the driver of the lorry bearing No.AP-01-T-9513; the Tribunal erred in making the appellant liable to pay compensation along with other respondents in the claim petition jointly and severally and, ultimately, prayed to set aside the award under appeal.

3. On the other hand, learned counsel for respondent No.4 herein-insurer of the van bearing No.AP-02-T-2325, contended that the accident occurred due to the rash and negligent driving of the lorry bearing No. AP-01-T-9513 and there is no rashness and negligence on the part of the driver of the van. The Tribunal had also erred in fastening liability against respondent No.4 herein (insurer of the van bearing No.AP-02-T-2325). The Tribunal has granted excessive compensation to the claimants and ultimately prayed to set aside the award and dismiss the claim against respondent No.4-insurer of the van bearing No.AP-02-T-2325.

4. Learned counsel for respondents 1 and 2/claimants contended that while dealing with the claim petition, the Tribunal has taken the age, income of the deceased and also the dependency of respondents 1 and 2/claimants on the deceased; by taking all the facts and circumstances into account, the Tribunal had granted compensation of Rs.5 lakhs; the Tribunal, while dealing with the issues had clearly given a finding that the accident occurred due to the rash and negligent driving of both the vehicles and, accordingly, made all the respondents jointly and severally liable to pay compensation to respondents 1 and 2/claimants; there is no error in the award and no intervention of this Court is warranted and, ultimately, prayed to dismiss the appeal.

5. In view of the contentions put forth, the following points have come up for determination:

1. Whether the accident occurred due to the rash and negligent driving of the lorry bearing No.AP-01-T-9513, whether the accident due to the rash and negligent driving of the van bearing No.AP-02-T-2325; or whether both the vehicles are responsible for the accident?
2. Whether the compensation awarded to the claimants at Rs.5 lakhs is excessive?
3. Whether the impugned award is liable to be set aside?

6. Point No.1:

The specific case of the claimants is that the accident occurred due to the rash and negligent driving of both the vehicles, i.e., lorry bearing No.AP-01-T-9513 and van bearing No.AP-02-T-2325. Admittedly, P.W.1, who is claimant No.1, is not an eyewitness to the accident. The evidence of P.W.2 reveals that he was co-passenger in the van bearing No.AP-02-T-2325 and is an eyewitness to the accident. The deceased Venugopal Reddy along with P.W.2 and others was travelling by van bearing No.AP-02-T-2325 and when the van reached Gollapalli village on Anantapur-Bangalore NH 7 road at about 7.30 p.m., the driver of the van drove the van in a rash and negligent manner with high-speed, lost control over the van and after overtaking R.T.C., bus, dashed the lorry bearing No.AP-01-T-9513,

which was also being driven in highly rash and negligent manner, coming from the opposite direction. In the cross-examination, P.W.2 reiterated the same. In the cross-examination, P.W.2 has stated that the vehicles which were coming in opposite direction were visible to him; the lorry which came in opposite direction was a mini lorry; he observed the lorry just before the collision with the van against each other; he did not know the registration number of the R.T.C., bus, which was proceeding in front of the van; the driver of the van took the van to the right side of the bus in order to overtake the bus; the accident occurred at 7.30 p.m. As both the vehicles came near to each other, the accident could not be averted, in spite of applying brakes; the accident took place on a national highway; the van driver did not apply dim and dip lights. As seen from the cross-examination of P.W.2, nowhere he has admitted that the accident did not occur due to the rash and negligent driving of the lorry. Throughout the cross-examination, P.W.2 reiterated that the accident occurred due to the rash and negligent driving of both the vehicles. He did not absolve the driver of the van from causing the accident. He did not speak about the innocence of the driver of the van. Ex.P.1 is the copy of the FIR, which was lodged by the cleaner of the lorry bearing No.AP-01-T-9513, which reveals the rash and negligent driving of the van bearing No. AP-02-T-2325 by its driver. Neither the cleaner nor the owner of the lorry was examined on behalf of the

appellant/respondent No.4. Except certified copy of FIR, certified copy of Inquest Report and certified copy of the post-mortem of the deceased, there is no other document to prove that the accident occurred due to the rash and negligent driving of the driver of the van only. Except the evidence of P.W.2, there is no other evidence on record. In these circumstances, the trial Court had given elaborate reasons and held that both the vehicles are responsible for the accident. As the finding is based on evidence, no other finding can be substituted. In these circumstances, it can safely be concluded that drivers of both vehicles are equally responsible for occurrence of the accident.

Point No.1 is answered accordingly.

7. Point No.2:

As seen from the award of the Tribunal, the Tribunal had granted compensation of Rs.5 lakhs to the claimants, i.e., the wife and son of the deceased with interest at 9% p.a, on different accounts. The calculation made by the Tribunal is Rs.5,20,000/- towards loss of earnings, Rs.15,000/- towards consortium. No amount was granted towards mental agony. In all, the Tribunal arrived at Rs.5,45,000/-. Since the claimants have claimed compensation of Rs.5 lakhs, the Tribunal had awarded compensation of Rs.5 lakhs. There is no infirmity and the same is liable to be confirmed.

Point No.2 is answered accordingly.

8. Point No.3:

As seen from the copies of the insurance policies marked as exhibits, there is no dispute with regard to insurance of both the vehicles with the appellant and respondent No.4-insurance companies. The insurance is valid on the date of occurrence of the accident. There is also no evidence of violation of the terms and conditions of the policies. As it is held that both the drivers are equally responsible for the occurrence of the accident and the death of the deceased, therefore, the owner and insurer (respondents 4 and 5) of the van bearing No.AP-02-T-2325 are jointly and severally liable to pay 50% of the compensation awarded by the Tribunal and the remaining 50% is liable to be paid by the appellant and respondent No.3, jointly and severally, being insurer and owner of the lorry bearing No.AP.02.T.2325.

9. The Tribunal granted interest at 9% per annum from the date of claim petition till the date of deposit. In view of the decision of the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**¹, claimants are entitled for interest at 7.5% per annum from the date of claim petition till realization.

¹ 2013ACJ1403 = 2013(4) ALT 35

10. The appeal is disposed of, modifying the order under appeal to the above extent.

Miscellaneous applications, if any, pending in this appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

March 10, 2017
MRR

