

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.NOS.1501 AND 2157 OF 2007, 4217 OF 2008, 784 OF 2009, 1684 of 2013 AND MACMA(SR).NO.14700 OF 2007

COMMON JUDGMENT

All the appeals have arisen pursuant to the orders dated 14.3.2006 passed by the Tribunal considering the same accident. They are heard together and are being disposed of by this common judgment.

There is a head on collision between the jeep bearing No. AP 31-V-6224 and the RTC bus on 18.1.2002 and it resulted in death of six persons and injuries to others. The dependants of the deceased, who died in the motor vehicle accident on 18.1.2002, filed M.V.O.P.NOS.387, 435, 443, 968 and 1201 of 2002 on the file of Motor Vehicles (Accidents Claims Tribunal cum X Additional District Judge (FTC), Guntur at Narasaraopet. One of the injured in that accident filed M.V.O.P.No.427/2002 on the file of the said Tribunal. The Tribunal by separate orders dated 14.3.2006 awarded compensations. Aggrieved by the same, the Insurance Company filed the above appeals.

The case of the claimants is that on 18.1.2002, while deceased and the injured in these appeals along with others, were returning from Tirupathi in a jeep bearing No.AP-31V-6224, and that when the jeep reached near Pandluru Tank, Naidupet Mandal on N.H.5 road at about 5.30 a.m., the driver of the jeep drove the vehicle in a rash and negligent manner and dashed against the bus of the Andhra Pradesh Road Transport Corporation, which was coming in its opposite direction on N.H.5 road. As a result, the deceased in these appeals died and others received injuries. A case in Cr.No.8/2002

under Sections 337, 338 and 304-A of IPC was registered. With these averments, and further claiming that due to the accident, they lost dependency and earnings, the dependants of the deceased and the injured, filed claim petitions under sections 140, 141, 163-A and 166 of Motor Vehicles Act and the Rule 514 of A. P. M. V. Rules, claiming compensations against the insured and insurer of the jeep and the Andhra Pradesh State Road Transport Corporation.

The respondents, who are the owner of the jeep and its insurer, and the Corporation, filed their counter affidavits denying the averments made in the claim petitions and sought for dismissal.

Considering the evidence, both oral and documentary, available on record, the Tribunal held that the driver of the jeep is responsible for the accident and that there is no rashness or negligence on the part of the driver of the Corporation Bus. The Tribunal also held that as there is violation of the policy conditions by the insured, by allowing the person who has no valid driving licence to drive the vehicle and also by allowing more number of passengers than the seating capacity to travel in the jeep, the insurer is not liable to pay compensation. However, as the policy of the offending vehicle is in force, the insurer was directed to pay and recover the amount from the owner of the vehicle.

Aggrieved by the judgments dated 14.3.2006 passed by the Tribunal in all these claim petitions, the insurance company filed the present appeals.

The learned counsel appearing for the appellant/insurance company submits that the claimants filed the claim petitions under Sections 140, 141, 163-A and 166 of the Motor Vehicles Act and these are wrong provisions of law and as such the appeals are not maintainable. He further submits that P.W.2, who is the eye witness, in MVOP.No.968/2002, deposed in chief examination that the accident occurred due to rash and negligent driving of drivers of both the vehicles i.e., jeep and the bus and, therefore the compensation awarded, has to be apportioned between vehicles. But the Tribunal ignoring this piece of evidence, has fastened the liability only on the insurer of the jeep and made the insurer to first pay and then recover from the insured. Therefore, he sought to allow the appeals and apportion the liability accordingly.

On the other hand, the learned counsel appearing in all these appeals for the respondents/claimants, who are the legal representatives of the deceased and the injured and also the learned counsel appearing for the Corporation contended that there is ample evidence on record to hold that the accident occurred due to rash and negligent driving of the driver of the jeep. They further stated that there is clear-cut evidence of P.W.2, who in his further cross-examination conducted by the Corporation, has categorically deposed about the rash and negligent driving of the driver of the jeep. Therefore, the Tribunal considering his evidence coupled with documentary evidence, has recorded finding of fact that the accident occurred due to rash and negligent driving of the driver of the offending jeep and there are no

grounds to interfere with the impugned orders and accordingly sought for dismissal of the appeals.

Learned standing counsel for the respondent-R.T.C. contended that the Tribunal had recorded the findings holding that there was rashness and negligence on the part of the driver of the jeep and there was no negligence on the part of the driver of R.T.C. bus. This finding is recorded basing on the evidence on record. There is no composite or contributory negligence between the two vehicles. The Tribunal had rightly tagged the liability against the insured and insurer of the crime jeep and, ultimately, prayed to dismiss the Appeals.

There is no dispute with regard to quantum of compensation awarded by the Tribunal in all these appeals.

In view of the rival contentions put forth by the respective counsel, the point that arises for determination is whether the accident occurred due to composite negligence of drivers of both the vehicles i.e., the jeep and the bus?

There is no dispute that P.W.2 was travelling in the offending vehicle i.e., jeep bearing No. AP 31-V-6224 at the time of accident and based on his report, case in Cr.No.8/2002 was registered. In the chief examination, he deposed that on 18.1.2002, while they were returning in a commander jeep and when the jeep reached near Kambalacheruru, near Naidupet, RTC bus came in the opposite direction in a rash and negligent manner and; the driver of the jeep and the driver of the RTC bus, are responsible for the accident.

In his cross-examination conducted by the insurer of the jeep i.e., the present appellant, P.W.2 deposed that accident occurred due to collision of the jeep and the bus and the drivers of both the vehicles are responsible for the accident. However, in his further cross-examination made on behalf of the Corporation, he admitted that the jeep went to the eastern side and dashed against the bus. Further P.W.2 in his report to police under Ex.A-1, stated that the driver of the jeep drove it in a rash and negligent manner and dashed against the RTC bus. Ex.B-1 is the certified copy of rough sketch of scene of offence. As per rough sketch, the Tribunal found that the bus was going on the left side of the road and jeep came to the wrong side on its right side and dashed against the RTC bus. Ex.B-2 is the scene of offence observation report. As per Ex.B-2, the front tyres of the bus were broken and jeep went north-east cross of the bus. Ex.B-3 is copy of the report of Motor Vehicle Inspector. Under Ex.B-3, the Motor Vehicles Inspector, who examined the offending jeep, opined that the accident occurred not due to any mechanical defect of the jeep. Ex.B-5 copy of the charge sheet also disclosed that the accident occurred due to rash and negligent driving of the driver of the jeep and the case against him stood abated, as he is no more. Further there is also the evidence of the driver of the bus who was examined as R.W.1., and he had categorically deposed that he has driven the bus carefully and that the accident occurred due to rash and negligent driving of driver of the jeep. In the cross-examination, he reiterated the same and nothing could be elicited to the effect that the accident occurred due to composite negligence of drivers of both the vehicles. From the documents discussed above, there is no mention that the driver of the bus

was also responsible for the accident. There is nothing on record to disbelieve the evidence of R.W.1, the driver of the bus. In view of this overwhelming evidence available on record, it is difficult to believe the statement made by P.W.2 in his evidence that drivers of both the vehicles are responsible for the accident. In the light of evidence of P.W.2 coupled with the contents in Ex.A-1 FIR, Ex.B-2 rough sketch of scene of offence, Ex.P-5 copy of charge sheet and the evidence of the driver of the bus R.W.1, it is clear that the accident occurred due to rash and negligent driving of the driver of the offending jeep. The Tribunal, in my considered view, has rightly recorded finding of fact in this regard and no other finding can be substituted, except confirming the same.

The learned counsel for the appellant – insurance company contended that the claim petitions were filed under Sections 140, 141, 163-A and 166 of the Motor Vehicles Act. The claimants are entitled to file claim petition under Section 166 of the Motor Vehicles Act. The wrong provision mentioned by the claimants, disentitles them compensation.

It is settled legal principle that even though an application is filed under a wrong provision of law, that will not restrain the jurisdiction of the Tribunal from granting the relief, subject to entitlement of the claimants, under the correct provision of law. Therefore, having regard to the averments made in the claim petitions and the evidence led by the parties, filing of the claim petitions under wrong provision of law, cannot defeat the right of the claimants to claim compensation and the Tribunal has rightly awarded compensation.

In the facts and circumstances of the case, the respondents / claimants have proved the rashness and negligence on the part of the driver of the jeep bearing No.AP 31 V 6224 and damage caused to them. The Tribunal has elaborately dealt with the entitlement of the parties and taking their age, income and by applying the correct multiplier, awarded compensation under loss of dependency and amounts under other heads. As already noted above, there is no dispute with regard to quantum of compensation. Hence, the same warrants no interference.

Learned standing counsel for the appellant-insurer of the jeep submitted that the driver and owner of the jeep have violated the terms and conditions; ample evidence is placed on record to substantiate the same. The Tribunal had considered the same to fix the liability against this respondent directing the respondent to deposit the decretal amount; thereafter, a liberty was given to recover the same from the owner of the jeep. In the facts and circumstances of the case, the Tribunal ought not have tagged the liability against the respondent-insurer.

While dealing with this point, the Tribunal had analyzed the entire evidence on record. As per Ex.B-7, copy of insurance policy, the seating capacity of the jeep is 6 + 1. As per Ex.A-1, certified copy of F.I.R., there were ten passengers in the jeep, which includes the driver. The driver of the jeep allowed more passengers in the jeep than its seating capacity. A letter under Ex.B-9 was addressed to the owner of the jeep, asking to furnish the driving particulars of the jeep driver; Ex.B-8 reply was given by its owner of

the jeep without furnishing the driving particulars of the jeep driver. Till date no driving particulars of the driver of the jeep, who died and the case against stood abated, are furnished to the appellant-insurer. There is also no oral evidence absolutely to show that the driver of the jeep is having valid driving license. The Tribunal had recorded a finding that the respondent-owner of the jeep had violated the terms and conditions of the policy marked as Ex.B-7, which was in force on the date of accident. Therefore, the Tribunal had rightly recorded a finding to the effect that the respondent-owner of the jeep had violated the terms and conditions of the policy. The appellant-insurer was directed to deposit the compensation awarded with a liberty to recover the same from the respondent-owner of the jeep. There is no infirmity in the said direction; the same is liable to be confirmed.

In the result, the appeals in MACMA.NOs.1501 and 2157 of 2007, 4217 of 2008, 784 of 2009, 1684 of 2013 and MACMA(SR).NO.14700 OF 2007, arising out of orders dated 14.3.2006 in MVOP.Nos.387, 435, 443, 968 and 1201 of 2002, are devoid of any merits and are liable to be dismissed and accordingly dismissed confirming the order under appeals. No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

DR.SHAMEEM AKTHER,J

DATE:17—03—2017

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