

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 210 of 2008

JUDGMENT:

1. The appellant/claimant, aggrieved by the Award and decree dated 11.07.2007 passed in MVOP.No.1175 of 2003 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-VIII Additional District Judge (FTC), at Guntur, preferred this appeal on the grounds that the Tribunal erred in holding that the driver of the car only was negligent; whereas drivers of both the lorry and car are negligent and that the driver of the lorry has not taken any precautionary measures to avoid the accident.

2. Respondents 2 and 4 filed respective written statements and contended that the accident occurred on account of negligence on the part of driver of other vehicle and they need not to pay any compensation.

3. Fourth respondent-National Insurance Company Limited further contended that the policy did not cover the risk as it was issued on condition of own use of the vehicle by its owner, but not for hire or reward.

4. The Tribunal having considered the pleadings of both sides, framed the following issues for settlement.

- a) Whether the accident occurred due to rash and negligent driving of the drivers of Ashok Layland

lorry bearing No. AP 27T 9898 and Maruthi Car Bearing No. AP 15N 1160?

- b) To what compensation the petitioner is entitled and from whom?
- c) To what relief?

5. In order to prove the claim, the appellant/claimant examined P.Ws.1 to 3 and got marked Exs.A.1 to A.4 and Exs.X1 and X.2 on their behalf. The respondents examined R.Ws.1 and 2 and got marked Exs.B.1 on their behalf.

6. The appellant/claimant himself was examined as P.W.1 besides examining doctor who treated him as P.W.2 and owner of Maruthi Car bearing No. AP 15 N 1160 as P.W.3.

7. The undisputed facts spell out from the evidence of P.W.1 read with P.W.3 and contents in Exs.A.1 and A.3 go to suggest that P.W.3 was the owner of the Maruthi Car bearing No. AP 15N 1160. Ex. A.1-FIR presented by Sri K.Venkata Rao-- P.W.1 who was present in the said Maruthi Car at the time of accident categorically stated that he was resident of Kothapet, Guntur, and was working as DEO in Chit Fund Company, Guntur. P.W.1 during the cross-examination admitted that he gave Ex.A.1-complaint to the police. In the chief examination itself he (P.W.1) stated that on 12.06.2003 he along with his family members were travelling in the Maruthi Car bearing No. AP 15N 1160 to go to Tirupathi. His son sat in the front left side

seat located by the side of driver-Ramudu and his daughter, himself and his wife sat in the rear side from right to left in the said car. In Ex. A.1-FIR, P.W.1 clearly asserted that on 12.06.2003 at 1100 hours he along with his family members started in the Maruthi Car bearing No. AP 15N 1160 to go to Tirupathi. The Investigation Officer after thorough investigation filed Ex.A.3—charge sheet finding that on 12.06.2003 P.W.1 engaged Maruthi Car bearing No. AP 15N 1160 to go to Tirupathi along with Prosecution Witnesses 2 to 4 who are his wife, son and daughter. Thus the evidence clinches that on 12.06.2003 at about 1100 hours P.W.1 along his wife, son and daughter started at Kothapeta, Guntur to go to Tirupathi.

8. Ex.A.1 was the earliest report presented by P.W.1 who was also travelling in the same Maruthi Car to go to Tirupathi. P.W.3 is Dr.Katta Suguna Rao, whose evidence is that he purchased Maruthi Car bearing No. AP 15 N 1160 in the year 2002. The complainant in Ex. A.1, K.Venkata Rao-- P.W.1 was the friend of P.W.3 who handed over his car to him (P.W.1) to go to Tirupathi with his family members. Admittedly it was his personal car and he did not collect any rent from K. Venkata Rao, who was his close friend. During cross-examination, P.W.3 stated that there was no relationship between him and said K.Venkata Rao and that there were also no business transactions in between them.

9. Basing on admissions made by P.W.3 during cross-examination that there was no relationship and no business transactions between him (P.W.3) and K. Venkata Rao whom P.W.3 allowed to take his Maruthi Car to go to Tirupathi along with his family members, the Tribunal discussed at length and observed in its lines.... *“The counsel for first petitioner takes to the evidence of petitioner P.W.3 i.e. third respondent and it was a friendly rich, but not for hire and what is stated in Ex.A.1 FIR is that they paid Rs.500/- to the driver. But they have not hired vehicle as such. On the other hand, the counsel for fourth respondent argued that admittedly the petitioner is a resident of Guntur and third respondent P.W.3 is resident of Karimnagar and P.W.3 admitted that there were no transactions or relationship between them and to contend that these people are friends without any nexus is nothing short of trying to mislead the Tribunal. This tribunal is fully convinced with the argument put forth by the learned Counsel for fourth respondent”*. Basing on the same, the Tribunal reached its conclusion that P.W.3 gave his Maruthi Car on hire to the family members of P.W.1 who engaged the driver on payment of Rs.500/- , which was the basis for the Tribunal to fix liability against the concerned.

10. The evidence of P.W.1 is that though their driver Ramudu was driving their car on left margin of the road at minimum speed, driver of lorry bearing No. AP 27T 9898 drove his lorry at high speed, in rash and negligent manner, came in

opposite direction, over took the RTC bus ahead of him, plied in the same manner and hit against the left side of their car resulting injuries to him and other occupants and damages to the Maruthi Car. A reading of Ex.A.1-FIR as also Ex. A.3-Charge Sheet goes to suggest that P.W.1 stated in the complaint as "నా కారుకు CH F&L షారుగ త్రవ్వక త్రవ్విన కారణం వాడు దును రూ.500/- షారుగ మాట్లాడుకొని బయట పోయాడు";

which means that they engaged one Kanatham Ramudu as driver to drive Maruthi Car bearing No. AP 15N 1160 to go to Tirupathi on payment of remuneration of Rs.500/-. In Ex. A.3-Charge sheet, the Investigating Officer after thorough investigation came to the conclusion that P.W.1 arranged said Kanatham Ramudu as driver to the said Maruthi Car on contract basis of payment of Rs.500/- as remuneration.

11. P.W.3 was the owner of the said Maruthi Car, through whom, during the cross examination, Respondent No.4 elicited that he do not know the name of the driver of the car who drove it at the time of accident. In the circumstances discussed hereinabove, I am of the considered opinion that P.W.3 was the owner of Maruthi Car bearing No. AP 15 N 1160; that he allowed P.W.1 and his family members to go to Tirupathi in the said Maruthi Car by engaging driver. Accordingly, said Kanatham Ramudu was engaged as driver on payment of Rs.500/- per day to go to Tirupathi. What P.W.3 allowed is only to take his car, but not with driver. It is the P.W.1 and his family members who

engaged the driver on payment of charges for driving the car belonging to P.W.3. However, the conclusion of the Tribunal is that there were no business transactions and relationship between P.W.3 and K. Venkata Rao, to establish friendship between them. The friendship concerned is of between two hearts and there would not be any prior relationship or business connections for such friendship. Absolutely there is no iota of rebuttal evidence produced by the respondents or elicited through P.W.1 to establish that P.W.1 and his family hired Maruthi Car bearing No. AP 15 N 1160 from PW.3. It is only P.W.3 because of his friendship with K. Venkata Rao who was working as DEO in Sreeram Chit Fund Company, Kothapet, Guntur allowed him to take car by engaging the driver. Accordingly P.W.1 and his family members engaged said Kanatham Ramudu as driver on payment of Rs.500/- to drive Maruthi Car bearing No AP 15 N 1160 to go to Tirupathi. Accordingly the finding of the Tribunal that P.W.1 and his family members hired the said Maruthi Car and proceeded towards Tirupathi at the time of accident is without any basis and the same is nothing but based on presumptions and assumptions, which finding is perverse.

12. Further, the contention of the appellant is that the driver of the lorry bearing No. AP 27T 9898 was also responsible for the accident. In Ex. A.1-FIR which was the earliest report,

that too presented by one of the passengers in the Maruthi Car, i.e. P.W.1 alleged that the driver of the Maruthi Car was at fault and due to his rash and negligent driving of the car, the accident occurred. The Investigating Officer in Ex.A.3-Charge sheet also found that the driver of the Maruthi Car bearing No. AP 15N 1160 drove it in high speed and rash & negligent manner and hit the lorry bearing No. AP 27T 9898 which was coming from Nellore side on NH 5, near K. Rajupalem village at 1600 hours on 12.6.2003. In the said accident, the Maruthi Car was badly damaged. P.W.3. deposed in chief examination that he claimed insurance towards damages caused to his car and the Insurance Company compensated the same. Though no proof was filed, the evidence of P.W.3 is believable throughout that P.W.3 claimed and realized insurance for the damages caused to his car in the accident.

13. With regard to negligence, for the first time, in the evidence affidavit filed on 9.10.2006 P.W.1 stated that the driver of the lorry bearing No. AP 27T 9898 drove it at high speed, in rash and negligent manner, came in opposite direction, over took the RTC bus ahead of them, plied in the same manner and hit against the left side of their car resulting injuries to him and other inmates and damages to the said Maruthi Car. Had it been correct, PW.1 who gave report in Ex.A.1–FIR to the police at earliest should have mentioned the same. This is nothing but an improvement in the evidence deposed for the first time after

three years of the accident. The investigation by the police and also charge sheet Ex. A.3 well established that the accident was due to rash and negligent driving of driver of the Maruthi Car bearing No. AP 15 N 1160. Since P.W.3 allowed P.W.1 and his family members to take his Maruthi Car bearing No. AP 15N 1160, it is P.W.3 who indirectly allowed them to engage a qualified driver to drive the said car. Accordingly P.W.1 and his family members engaged Kanatham Ramudu, a qualified driver, who caused the accident by driving the Maruthi Car bearing No. AP 15 N 1160 in rash and negligent manner.

14. R.W.1 was the Senior Assistant in the office of Respondent No.2-Insurance Company with which the first respondent insured his lorry bearing No. AP 27T 9898 and the policy was in force as on the date of accident. The said policy was not filed before the Tribunal. Further, the evidence of P.W.1 is that he did not give evidence in the criminal case registered against the driver of the lorry. As such, the Insurance Company—second respondent is not liable to pay any compensation.

15. Ex.B.1 is the Package Insurance Policy issued on 19.12.2002 for the Maruthi Car bearing No. AP 15 N 1160, which was in force up to 19.12.2003 and there is no dispute that the insurance policy pertains to Maruthi Car bearing No. AP 15N 1160 was in force as on the date of accident, i.e. on 12.6.2003 and the said policy covers the risk of the appellant/claimant and

his family members who are third parties so far as the said Maruthi Car is concerned. The contention of R.W.2 is that the family of the appellant/claimant took the car of P.W.3 on hire by paying Rs.500/- has no basis, because FIR–Ex.A.1 and Charge sheet–Ex.A.3 go to suggest that the driver was engaged on payment of Rs.500/- and the said amount was not towards hire charges, but it was towards remuneration of the driver–Ramudu. Hence the contention of the respondents that the Maruthi car was hired by PW.1 and his family members has no legs to stand.

16. In the facts and circumstances discussed hereinabove, I am of the considered opinion that the accident was due to rash and negligent driving of the driver of Maruthi Car bearing No. AP 15 N 1160. P.W.3 allowed his friend, K. Venkat Rao-P.W.1 and his family members to take his Maruthi Car to go to Tirupathi by engaging a driver by themselves. Accordingly said K.Ramudu, driver, was engaged by P.W.1 and his family members by paying Rs.500/- towards remuneration. At 1700 hours of 12.06.2003 their vehicle was involved in the accident. In view of the same, the finding of the Tribunal that the said Maruthi Car was hired by P.W.1 at the time of accident is without any basis. Due to friendship between P.W.3 and K.Venkata Rao-P.W.1, the former (P.W.3) allowed P.W.1 to take his car at free, but not on hire.

17. It was proved that there was no negligence on the part of the driver of lorry bearing No. AP 27T 9898. Insurance Policy issued in respect of the said lorry was not filed before the Tribunal. The respondents having taken plea that there was head on collusion failed to adduce any evidence on record to substantiate the same. Therefore, by virtue of the policy Ex. B.1, respondents 3 and 4 are jointly and severally liable to pay compensation.

18. In view of the foregoing discussion, the findings of the Tribunal that P.W.3/third respondent gave his Maruthi Car bearing No. AP 15N 1160 on hire to P.W.1 and his family members and that third respondent alone is responsible to pay compensation while absolving liability of insurance company—fourth respondent, are illegal, void and perverse. Consequently, the third and fourth respondents are jointly and severally liable to pay the compensation assessed by the Tribunal.

19. In the result, the compensation amount and interest awarded by the Tribunal is confirmed and the finding of the Tribunal that third respondent alone is responsible to pay the compensation while absolving the liability against fourth respondent is set aside and modified to the extent that the third and fourth respondents are jointly and severally liable to pay the compensation assessed by the Tribunal.

20. Accordingly, upholding the findings of the Tribunal that the appellant/claimant is entitled for compensation amount of Rs.75,000/- with interest at 18% per annum from the date of the petition till realization, the appeal is allowed in part to the extent indicated hereinabove.

21. The third and fourth respondents shall deposit the compensation amount, less the amount if any already paid, within a period of six weeks from the date of receipt of a copy of this order.

22. On such deposit being made, the appellant/claimant is permitted to withdraw the same, without furnishing any security.

23. Advocate fee is fixed at Rs.2,000/-.

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

JUSTICE N. BALAYOGI

DATED -----August, 2017.
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