THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA No. 542 of 2005

AND

CRP No.3299 of 2006

COMMON JUDGMENT:

As a motor vehicle accident that occurred on 23.08.1999, wherein an auto collided with a Karnataka State Road Transport Corporation bus (for short, KSRTC bus), is common in both these matters, they are being disposed of by this common judgment.

MACMA No.542 of 2005

Aggrieved by the order and decree dated 21.09.2004 passed in O.P.No.486 of 2001 by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak, at Sanga Reddy, the National Insurance Company, who is the 3rd respondent in the said O.P., filed this appeal challenging the fastening of liability at 50% on it to pay a sum of Rs.2,75,000/- out of the total compensation of Rs.5,50,000/- awarded by the Tribunal on account of the death of Smt. K. Vasantha Kumari in a motor vehicle accident that occurred on 23.08.1999.

2. The brief facts averred in the petition filed before the Tribunal are that on 23.08.1999, at 4:00 PM, Smt. K. Vasantha Kumari (deceased) while traveling by auto bearing No.AP 13 V 617, along with other passengers, the said auto was driven by its driver in a rash and negligent manner and when the auto reached near ICRISAT on national highway, one KSRTC bus bearing No.KA 38F 55, driven in a rash and negligent manner came in opposite direction and collided

with the auto. Smt. K. Vasantha Kumari and 2 other passengers died instantaneously while other passengers sustained injuries. The driver of the KSRTC bus lodged a complaint with the Police Ramachandrapuram who registered a case in Crime No.198 of 1999 for the offences punishable under Sections 338 and 304-A IPC against the driver of the auto. It is further averred that the accident occurred due to the rash and negligent driving of both the drivers of auto and bus. It is averred that the deceased K. Vasantha Kumari was aged about 28 years by the date of accident and was working as MPHA at Gadipeddapuram, and earning Rs.5,000/- per month. The husband and minor son of the deceased have filed O.P.No.486 of 2001 claiming compensation of Rs.5,50,000 against the respondents 1 to 5. The 1st respondent is the driver and the 2nd respondent is the owner and the 3rd respondent is the insurer of the auto involved in the accident. The 4th respondent is the General Manager, KSRTC, Humnabad Depot, and the 5th respondent is the driver of the KSRTC bus involved in the accident.

3. The 1st and 2nd respondents remained ex parte before the Tribunal. The 3rd respondent-Insurance company filed its counter denying the averments in the claim petition. The insurer *inter alia* contended that the accident occurred only due to rash and negligent act of the driver of KSRTC bus who is the 5th respondent, and thereby the 4th respondent-owner of KSRTC is liable to pay compensation. It is alleged that respondents 4 and 5 are in collusion with the petitioners and did not report the matter to the insured to cause loss to the insurance company. It is further averred that the claim of the

petitioners is highly excessive as such the claim petition is liable to be dismissed.

4. The 4th respondent-General Manager KSRTC filed counter denying the averments in the claim petition and contending *inter alia* that due to rash and negligence on the part of the driver of the auto the accident has occurred. The Police, Ramachandrapur has registered a case only against the driver of the auto, but the owner and the driver of KSRTC bus are unnecessarily impleaded though they have no liability to pay any compensation to the petitioners. It is further averred that the claim of the petitioners is highly excessive and therefore the claim is liable to be dismissed with costs.

5. The 5th respondent-Driver of KSRTC bus filed counter denying his negligence and alleged that the accident occurred due to the rash and negligent act of the driver of the auto and that there is no liability for respondent Nos.4 and 5, as such sought for dismissal of the claim petition.

6. The Tribunal, basing on the pleadings, has framed two issues; first, with regard to the alleged negligence on the part of the driver of auto and driver of KSRTC bus; and second, with regard to the entitlement of compensation by the claimants. On examination of the witnesses PWs.1 to 3, and marking documents Exs.A1 to A7 on behalf of petitioners; and examining RW1 and marking documents Ex.B1 on behalf of 3rd respondent, and on consideration of the arguments, the Tribunal allowed the claim petition awarding compensation of Rs.5,50,000/- with interest at Rs.9% per annum,

fastening the liability against the insurance company at 50%, and against KSRTC at 50%.

7. Aggrieved by the order of fastening liability at 50%, the insurer preferred this appeal. No appeal has been preferred by KSRTC challenging the fixation of liability at 50% against them.

8. Heard the arguments of learned counsel for the appellant-insurer.

9. The submissions of the learned counsel for the appellant are that though there is no contributory negligence, and the negligence is only the part of the driver of KSRTC, the Tribunal has given a finding that there is contributory negligence on the part of the driver of KSRTC bus and the auto. It is alleged that it was a case of head-on collision but the Tribunal has wrongly fastened the liability to both the vehicles at the rate of 50% each.

10. The learned counsel appearing for KSRTC submitted that the Tribunal has rightly decided the issue of negligence by fixing the liability of contributory negligence at 50% each, and KSRTC has deposited the entire 50% of their liability as fixed by the Tribunal and they are not disputing the Award passed by the Tribunal in that regard.

11. The submissions made by the learned counsel for the appellant-insurer with regard to the finding on negligence by the Tribunal, taking the contributory negligence on the part of both the

vehicles, can be considered by looking into the observations made by the Tribunal.

12. The Tribunal has taken into consideration the evidence of one Premamma, who was an eyewitness to the accident and was examined as PW2 in this case. According to her testimony, she was traveling in the auto at the time of accident and fortunately survived the accident with injuries. It is her testimony that when the auto reached near railway track on National Highway No.9 at Ramachandrapuram, KSRTC bus came in opposite direction and dashed the auto. She has testified that the accident occurred due to the rash and negligence on the part of both the auto and bus drivers and she had also asserted the same in her cross examination. Her evidence was unchallenged. There is no evidence on record to show that the accident occurred due to the sole negligence on the part of the driver of KSRTC bus. The insurer though contended that the accident occurred due to the sole negligence of the driver of KSRTC bus, has not brought on record any evidence to prove its contention, except by cross examining the eye witness produced by the petitioners-claimants. PW2 is an injured eye witness. She was traveling in the auto at the time of accident. There was no need for her to attribute negligence against the driver of KSRTC bus as well as the auto unless there was some negligence on the part of both the vehicles. The testimony of the direct eye witness is more reliable than the documents like FIR and Charge sheet. The driver of the KSRTC bus in fact lodged a complaint with the Police Ramachandrapuram and the police registered a case against the

driver of the auto. But in the light of the testimony of the direct eye witness PW2, and since the driver of the KSRTC bus was a party to the accident, the testimony of PW2 must be given credence than the complaint lodged by the driver of KSRTC bus. The Tribunal has properly appreciated this fact and by placing reliance on the evidence of PW2, who was an eyewitness to the accident, concluded that the accident occurred due to the contributory negligence on the part of both the vehicles. Therefore, there are no valid grounds to interfere with the findings of the Tribunal in holding that there is contributory negligence on the part of both the vehicles.

13. The learned counsel for the appellant-insurer further submitted that the driver of the auto was not having valid driving licence and the auto was not having valid permit to carry seven persons in the auto, which is in violation of terms and conditions of insurance policy. The counsel placed reliance on the testimony of RW1, the official of insurance company, who has placed reliance on the documents Ex.A5-MVI Report, and Ex.A2-charge sheet, and contended that the driver of the auto was not having valid driving licence, as such the insurer is not liable to pay compensation.

14. The Tribunal has rightly considered the plea of the insurer that the driver of the auto was not holding valid and subsisting licence to drive the auto, but held that the said plea is not tenable in view of the settled proposition of law laid down in the decision of United India Insurance Company Limited, Kurnool v. Lakshmaiah and

others[1], wherein it was held that the insurance company cannot disown its liability on the ground that the driver of the crime vehicle had no driving licence at the time of accident unless the insurance company pleads and adduces evidence that the owner handed over the vehicle with knowledge that the driver had no driving licence. It is obvious that there is no such evidence coming forth in the instant case from the side of the insurance company or the owner that the owner has handed over the vehicle to the driver having knowledge that the driver had no driving licence. The burden is on the insurance company to prove that the owner had handed over the vehicle knowingly that the driver had no driving licence. The insurer had failed to discharge this burden. It is pertinent to note that the deceased is a third party. The accident occurred out of the use of motor vehicle in a public place. The rash and negligent act on the part of both the vehicles is proved. There is valid insurance policy covering the liability of the deceased at the time of accident. Therefore, the insurer cannot disown its liability on the ground of the plea that the auto driver was not holding a valid and subsisting driving licence to drive the auto at the time of accident. No doubt the insurer may not be liable to pay compensation in case the driver is not having valid driving licence and there is violation of permit conditions, but in the instant case, though the contents of Ex.A5-MVI Report, and Ex.A2-charge sheet, show that the driver of the auto was not having valid driving licence, the liability of the insurer cannot be exonerated totally, and therefore this is a fit case where the

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[1] 2000 (3) ALT 298

insurer can be ordered to pay to the claimants at the first instance and recover the same from the owner of the auto.

15. Keeping in view the ratio laid down in the decisions of the apex Court in National Insurance Company Limited v. Swaran Singh[2], Oriental Insurance Company Ltd. v. Nanjappan[3]; and Khenyei v. New India Assurance Company[4] Limited, the insurer is directed to pay the claimants at the first instance and recover from the owner of the auto, by following the procedure in Nanjappan (2 supra).

CRP No.3299 of 2006

16. This revision petition is arising out of the order and decree dated 14.11.2005, passed in MVOP No.341 of 2000, by the Motor Vehicles Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), at Medak, granting compensation of Rs.8,141/- with interest at 7.5% per annum, against the respondents 1 to 3, who are the driver, the owner and the insurer of the auto involved in the accident, and exonerating the liability of respondent Nos.4 and 5, who are the owner, and the driver of KSRTC bus. The revision petitioner herein is the National Insurance Company Limited.

17. Heard arguments of learned counsel for revision petitioner, and the respondents.

[2] (2004) 3 SCC 297
[3] (2004) 13 SCC 224
[4] 2015 ACJ 1441

18. The learned counsel for the revision petitioner-insurer, submits that the present MVOP No.341 of 2000, and O.P.No.486 of 2001 are arising out of the same accident that occurred on 23.08.1999 at 4:00 PM between an auto and KSRTC bus, and that the Tribunal held in O.P.No.486 of 2001 that the accident occurred due to contributory negligence of both the auto and the KSRTC bus.

19. MVOP No.341 of 2000 is filed by one Kum. Manjula, who was traveling in the auto at the time of accident and was injured in the accident. The Tribunal awarded a compensation of Rs.8,141/- against the insurer of the auto, and exonerated the liability against KSRTC bus. The Tribunal placing reliance on the documents of FIR and Charge sheet has arrived at a conclusion that the driver of KSRTC was innocent since he had lodged the complaint against the driver of the auto. As a matter of fact, in O.P.No.486 of 2001 which is arising out of the same accident, it was held by the Tribunal that there was contributory negligence of both the auto and the KSRTC bus, and the liability was fixed at 50% each to the driver of the auto and the driver of KSRTC bus. The judgment and decree passed in O.P.No.486 of 2001 was marked as Ex.B3 in MVOP No.341 of 2000. Apparently, the Tribunal has not considered the findings in the judgment and decree made in O.P.No.486 of 2001 which is marked as Ex.B3 in MVOP No.341 of 2000. In O.P.No.486 of 2001, the Tribunal, on considering the evidence of PW2-Premamma, who was an injured eyewitness to the accident, who traveled in the auto at the time of accident, had categorically given a finding that the accident occurred due to the rash and negligent driving of both the auto and

the KSRTC bus. The testimony of eyewitness PW2-Premamma regarding the manner in which the accident occurred clearly reveals that there is contributory negligence of both auto and KSRTC bus. Therefore, there are no valid grounds or reasons for the Tribunal in MVOP No.341 of 2000 to come to the conclusion that the driver of the auto was alone responsible for the accident. Therefore, contributory negligence on the part of both the auto and the KSRTC bus is proved, even if we take into consideration the maxim *res ipsa loquitor* which means the things itself will speak. Therefore, the discussion made with regard to the negligence in M.A.C.M.A. No.542 of 2005 holds good even for this revision petition as both the original petitions arose out of the same accident. The findings and arguments advanced in the appeal are *mutatis mutandis* applicable to the present revision petition also. Consequently, the revision petition is also liable to be partly-allowed by fixing the liability at 50% to the revision petitioner and 50% to the KSRTC.

20. In the result, MACMA No.542 of 2005 as well as the C.R.P.No.3299 of 2006 are partly allowed. In MACMA No. 542 of 2005, the appellant-insurer is directed to pay compensation at the first instance to the claimants as per the liability fixed by the Tribunal with interest at 9% per annum from the date of petition till realization, within two months from the date of receipt of a copy of this order, and later recover the same from the owner of the auto as per the procedure laid down in Nanjappan (2 supra). In C.R.P.No.3299 of 2006, in view of fixing of liability at 50% to the revision petitioner and 50% to the KSRTC, the revision petitioner-

insurer is directed to pay the compensation amount at 50% of Rs.8,141/- with interest at 7.5% per annum from the date of petition till realisation, within two months from the date of receipt of a copy of this order, and then recover the same from the owner of auto as per the procedure laid down in Nanjappan (2 supra). The KSRTC is also directed to deposit its liability of 50% of the compensation awarded with interest at 7.5% per annum from the date of petition till realization, within two months from the date of receipt of copy of this order. No costs. Miscellaneous petitions, if any pending, shall stand closed.

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GUDISEVA SHYAM PRASAD, J

04th April, 2017

KNL / KSM

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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KSM