

THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.2059 of 2009

Date:14-03-2017

Between:

The Oriental Insurance Company Ltd.,
rep by its Divisional Manager,
holding its office at D.No.173,
J.N. Raoad, II Floor, Oil Mill, Tiruvallur,
Tamilnadu State and its local Office at
Divisional Manager, N.T.Road, Tirupati
Town, Chittoor District.

... Petitioner.

And

C. Venugopal and others.

... Respondents



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JUDGMENT:

The appellant, aggrieved by the award passed by the Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Tirupati in M.V.O.P.No.120 of 2005, dated 06-09-2007, preferred this appeal on the ground that the trial Court erred in making the appellant alone liable to pay compensation when the accident was a head-on-collision between the bus and lorry and also following the judgment of High Court of Andhra Pradesh reported in ***The Union of India (UOI), Rep., by the Secretary to Central Government, Ministry of Defence and another¹***.

Further contended that the Tribunal grossly erred in awarding compensation under different heads by not following the rule of law and though there was no sufficient evidence.

The undisputed facts are that the petitioner-claimant filed a claim petition under Section 166 (1) (a) of Motor Vehicles Act claiming compensation of Rs.10,00,000/- on account of injuries sustained by him in a motor vehicle accident occurred on 01-07-2003, at about 09.15 P.M., while he was traveling in APSRTC Bus bearing No.A.P 9Z 7653. The trial Court, on consideration of oral and documentary evidence, partly allowed the petition with proportionate costs and granted an amount of Rs.8,32,800/- together with interest at 7.5% per annum from the date of filing of the petition till the date of deposit. Aggrieved by the same, the appellant-Insurance Company preferred this appeal.

¹ 2005 ACJ 588.

Heard the learned counsel for the appellant-Insurance Company and learned counsel for the respondents.

The main contention of the appellant-Insurance Company is that the Tribunal grossly erred in fixing liability against the appellant alone leaving the owner and insurer of the lorry particularly when the accident was a head-on-collision between the lorry and bus.

In a decision of Supreme Court reported in **RAJA RANI VS. ORIENTAL INSURANCE COMPANY LIMITED**² wherein their Lordships held as follows:-

“The question of contributory negligence arises when there has been some act or omission on the claimant’s part which has materially contributed to the damage caused and as of such a nature that it may properly be described as negligence.”

In the instant case, the specific case of the petitioner-claimant is that on 01-07-2003, at about 09-15 P.M., while he was traveling in APSRTC Bus bearing No.AP 9Z 7653, the driver of the lorry bearing No.TN 20D 1960 drove in a rash and negligent manner lost the control over the lorry and hit the RTC Bus. As result, the bus went and hit to the house of one Amaaravathi of Sainagar.

The claimant - C. Venugopal himself examined as P.W.1 and besides examining coparcener T. Subramanyam as P.W.2. The evidence of P.Ws.1 & 2 is consistent and corroborated with each other. In one word, P.Ws.1 & 2 deposed that on 01-07-2003, while P.Ws.1 & 2 traveling in the RTC Bus bearing No.AP 9Z 7653, at about 09-15 P.M., near Sainagar, the driver of the lorry bearing No.TN 20D 1960, drove the lorry in most rash and negligent manner with high speed, lost control without taking due care and caution, had hit the

² 2009 Law Suit (SC) 946

RTC Bus in which they were traveling, as result, the bus went and hit to the house of one Amaravathi of Sainagar. The driver of the first respondent caused the accident in the course of his employment, while discharging his duties under first respondent. The suggestions of P.Ws.1 & 2 are that the accident was neither due to negligence of the lorry driver nor was due to with the negligence of the driver of the RTC Bus. There was never a suggestion took P.Ws.1 & 2 who are the proper persons to speak with regard to contributory negligence on the part of the driver of the RTC Bus and the offending lorry.

The driver of the bus bearing No.A.P. 9Z 7653 was examined as R.W.1 and whose evidence is that at about 09-15 P.M., when the RTC bus reached near Sainagar, a lorry bearing No.TN 20D 1960 came in an opposite direction at high speed in a rash and negligent manner and dashed the bus driven by him and presented Ex.A1-report to the police against the driver of the said lorry.

When the evidence of R.W.1 read with the documentary evidence on record Ex.A1-coy of the FIR presented by R.W.1 at 03-00 A.M., on 02-07-2003 in respect of accident dated 01-07-2003 at 09-10 P.M., in the said FIR earliest report R.W.1 specifically stated that the driver of the lorry bearing No.TN 20D 1960 drove the lorry in a rash and negligent manner and dashed against the APSRTC Bus bearing No.AP 9Z 7653 and at the time of accident, the lorry was driven by its driver with high speed in a rash and negligent manner came in opposite direction.

The Investigating Officer, after thorough investigation, filed the charge sheet under Ex.A2 against the driver of the lorry bearing No.TN 20D 1960 finding that the said driver drove the lorry in a rash and negligent manner and dashed the APSRTC Bus bearing No.AP 9Z

7683, as a result of which, the said bus went and hit to the house of one Amaravathi (deceased).

The Motor Vehicle Inspector inspected the offending lorry bearing No.TN 20D 1960 on 02-07-2003 in the police station and opined that the accident was not due to any mechanical defects of both the vehicles.

Ex.B2 is the rough sketch of the scene of offence in which the RTC Bus bearing No.AP 9Z 7683 is shown in the road margin on the southern side and the lorry bearing No.TN 20D 1960 was shown on the northern side of the road.

Ex.B1 is the copy of the judgment in C.C.No.29 of 2005 which revealed that the driver of the lorry who is an accused in the said C.C was acquitted.

The Tribunal, having elaborate discussion of the evidence of P.Ws.1 & 2, marshalling the facts and considering the documentary evidence under P.Ws.1 & 2, R.W.1 and Exs.B1 & B2 came to the legal and correction conclusions that the specific case of the claimant and the evidence of P.Ws.1 & 2 is that on 01-07-2003 on 09-15 P.M., the driver of the lorry bearing No.T.N.20D 1960 came in opposite direction with high speed in rash and negligent manner without following the traffic rules and drove the lorry without any care and caution and caused the accident.

The main acquittal of the driver of the lorry cannot be said that the driver of the lorry was not responsible for the accident. The said acquittal was as material witnesses did not support the prosecution case. Further, came to the right conclusion that the evidence of P.Ws.1 & 2 and the documentary evidence available on record goes to

establish that the accident took place due to the rash and negligent driving of the driver of the lorry bearing No.TN 20D 1960.

The second respondent, the owner of the lorry, having taken the plea of contributory negligence, did not choose to enter into witness box. Absolutely there is no rebuttal evidence on record or any semblance of contributory negligence shown by the second respondent by producing oral or documentary evidence.

In the case relied on by the appellant, the clear finding is that there is contributory negligence due to a head-on-collision, but whereas in the instant case, from the stage of complaint under Ex.A1 till conclusion of the investigation and filing of charge sheet under Ex.A2, the specific case of the claimant and the prosecution is that the accident is due to rash and negligent driving of the driver of the lorry bearing No.AP 20D 1960. There is no any iota of evidence either oral or documentary to establish any contributory negligence. Hence the decision relied on by the appellant has no application to the facts of the present case.

With regard to the compensation concerned, there is ocular and medical evidence of P.Ws.1 to 5. In the petition, the age of the petitioner was mentioned as 35 years. The petitioner-claimant also filed Ex.A3-wound certificate issued by Christian Medical College, Vellore and Ex.X1-discharge summary of the medical college. In both the documents-Ex.A3 & Ex.X1, the age of the petitioner noted as 39 years.

With regard to the occupation and income, the trial Court considered the evidence of P.W.1, according to which, prior to the accident, P.W.1 was a Junior Lineman in A.P. Transco, Chittoor as per Ex.A14, the appointment order dated 01-08-2002 and was

earning Rs.3,000/- per month, which is substantiated by Ex.A10-pay slip for the month of September 2002. The evidence of P.W.1 corroborated with P.W.4 supported by Ex.A10 & Ex.A13 and Ex.X1 established that he was Lineman in A.P. Transco and drawing a salary of Rs.3,000/- per month.

The trial Court, further having considered the corroborative evidence of P.W.5 supported with Exs.X1 to X3, came to the conclusion that the right leg of P.W.1 was amputated at Knee joint by conducting surgery on 02-07-2003 and the permanent disability as per Ex.A6 suffered by P.W.1 is 80% to the right leg and 28% to his right arm.

The trial Court assessing the disability at 80% and considering the age of the P.W.1 is 39 years, applied multiplier '16' and awarded just compensation of Rs.8,32,800/- together with interest at 7.5% per annum.

The award granted by the Tribunal is just compensation is legal, valid and as per the oral and documentary evidence produced by the claimant. The award is legal valid which do not suffer from any legal infirmities warranting interference in the appeal.

Accordingly, the appeal is dismissed with costs while confirming the award in MVOP No.120 of 2005, dated 06-09-2007, on the file of Motor Accident Claims Tribunal-cum-IV Additional Sessions Judge, Tirupati.

As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand closed. No order as to costs.

JUSTICE N. BALAYOGI

Date:14-03-2017

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