

HON'BLE MS. JUSTICE J. UMA DEVI

M.A.C.M.A. No. 1704 of 2010

and

CROSS-OBJECTIONS (SR) No. 32270 of 2011

In

M.A.C.M.A. No. 1704 of 2010

JUDGMENT:-

This appeal is preferred against the order dated 31.10.2007 in O.P.No. 1979 of 2001 passed by the Motor Accidents Claims Tribunal-cum-VIII Additional District Judge, Nizamabad, (for brevity "the Tribunal") whereby, the petition filed by the claimant seeking compensation, has been partly allowed.

For the sake of convenience, the parties, hereinafter, will be referred to as they are arrayed in the present appeal.

The appellant is the Oriental Insurance Company, the 1<sup>st</sup> respondent is the claimant and the 2<sup>nd</sup> respondent is the owner of the crime lorry.

The appellant's contention is that the Tribunal has erroneously fastened 50% of liability against it though there was no negligence on the part of the driver of the lorry bearing No. TN23 E 4555 in causing the accident.

The grounds on which the appeal is preferred are as follows:

- 1) The order and decree passed by the Tribunal below is contrary to law, weight of evidence and all probabilities of the case. 2) The Tribunal below erred in fastening the liability on the appellant-company to the extent of 50% without any basis when

there was no negligence of the lorry driver. 3) The Tribunal below having observed that the accident occurred while the driver of the car in which the claimant was traveling was overtaking a lorry and when its left tyre was burst, and when the crime lorry which was coming in opposite direction, erroneously held that if the offending vehicle was not in sue at the time of the accident, the accident would not have occurred, and therefore, the lorry owner and the appellant-company are liable. 4) The Tribunal below having observed that as per the final report filed by the Investigating Officer that there is no negligence on the part of the lorry driver, erroneously held that the Issue No.1 need not be answered since the O.P. was amended by amending the provision from Section 166 of Motor Vehicles Act to Section 163-A in which case, mere involvement of the vehicle is sufficient to make the lorry owner and its insurer liable to pay compensation. 5) The Tribunal below ought to have observed that the accident occurred while the car driver who is the first respondent herein was overtaking another lorry and when the front tyre was burst with a result that he could not control the vehicle and hit the lorry coming in opposite direction. 6) The compensation awarded under different heads is excessive. 7) Other reasons assigned by the Lower Tribunal are not correct and proper.”

The facts to the extent necessary for disposal of the appeal are stated as under:

It is asserted by the 1<sup>st</sup> respondent (claimant in O.P.No. 1979 of 2010) in his pleadings that on 05.05.2001, during the course of his proceeding towards Tirupathi from Cuddpah along with his family members in Ford Car bearing No. AP13 D 225, near Bottivandlapalli, while overtaking a lorry proceeding ahead of his car, he saw a lorry bearing No. TN23E 4555 coming in his opposite direction with high speed. Though he put on the signal lights and applied brakes and showed the

signal by his hand to stop the lorry, the lorry driver neither applied brakes nor took any precautions to avert the accident, and hit the lorry to the car, and as the result of it, he sustained serious injuries and was taken to a nearby hospital and from there to SVIMS Hospital at Tirupathi, and there he took treatment as an in-patient for more than 15 days under the care and supervision of Dr.G.R.Chandrashekar, a neuro Surgeon. It is also pleaded by the 1<sup>st</sup> respondent that he was doing contract works prior to the accident and was getting income of Rs.20,000/- per month. He was also getting agricultural income of Rs.70,000/- p.a. by cultivating his land.

The 2<sup>nd</sup> respondent, who was the owner of the lorry, remained *ex parte* before the trial Court and the appellant – Insurance Company alone contested the case by filing a written statement.

In the written statement, the appellant contended that the police, after due investigation of the case, filed a report stating that the accident occurred only on account of rash and negligent driving of the car by the claimant / 1<sup>st</sup> respondent. It was further contended that the car hit the lorry of the 2<sup>nd</sup> respondent suddenly and no role was played by the driver of the lorry in causing the accident to the claimant. Seven passengers were traveling in the car at the time of the

accident. Travelling of more than the capacity of the car also was one of the causes for the occurrence of the accident.

These were the assertions made by the appellant before alteration of provision of law by the claimant from Section 166 to Section 163-A of Motor Vehicles Act. As the case was not contested by the owner of the lorry, the appellant sought permission of the Court to take all the defence available to the vehicle owner by filing an application under Section 170 of Motor Vehicles Act. After alteration of Section of law, additional written statement was filed by the appellant disputing the involvement of the lorry in the accident and it was contended that only due to involvement of the car belonging to the claimant, the accident in question took place.

An additional issue was framed by the Tribunal as to “whether the accident in question occurred due to the involvement of the 2<sup>nd</sup> respondent’s lorry or the car in which the claimant travelled?”

Before the trial Court, the claimant examined himself as PW1 and examined Dr.G.R.Chandrashekar as PW2 and Exs.A1 to A15 were produced in support of his case. No oral evidence was adduced by the appellant. However, copy of the Insurance Policy was marked as Ex.B1 on behalf of the appellant. Final report filed by the police was the only

document relied by the appellant to prove his contention that the accident did not take place due to the involvement of the lorry bearing No. TN23E 4555 belonging to the 2<sup>nd</sup> respondent.

The learned Judge while dealing with the additional issue whether the accident in question occurred due to the involvement of the 2<sup>nd</sup> respondent's lorry or the car in which the claimant travelled, noticed that, the claimant, while deposing as to the manner in which the accident took place, stated that while the car was overtaking the lorry near Battivandlapalli, the front left tyre of the car was burst and immediately he had put on the signal lights and raised his hand to give caution to the driver of the lorry, which was coming in his opposite direction, so that the lorry could be stopped, but the driver of the lorry without noticing the signal lights of the car drove the lorry with high speed, and the claimant, on seeing the lorry coming with high speed, applied brakes to avoid the accident, but all his efforts went in vain and the lorry that was coming in his opposite direction, hit the car driven by him, and it resulted severe injuries to him. But the contents of Ex.A2 – final report are contrary to the evidence of PW1. It is stated in Ex.A2 that as the attention of the car driver was diverted for few seconds due to sudden burst of front left side tyre though he applied brakes, he could not able to stop the car, and in that process, collision took

place between both the vehicles. The claimant himself stated in his evidence that while he was overtaking the lorry going ahead of him, he had seen a lorry coming in his opposite direction, meanwhile, the front left side tyre of the car was burst. In spite of the signal given by him, the lorry coming in his opposite direction, was not stopped and as the result of it, the lorry hit his car. The assertion made by PW1 as to the signal given by him to the opposite coming lorry driver, is nowhere mentioned in the final report, and the same appears to be an improvement. The Tribunal, taking note of the contents of Ex.A2 – final report and Ex.A10 - report of M.V. Inspector and the evidence of PW1, opined that there appears substantial material in the case record as to the involvement of the lorry bearing No.TN23E 4555 and the car driven by the claimant, accordingly held that the appellant and the 2<sup>nd</sup> respondent equally contributed for the occurrence of the accident. The Tribunal referred to various case laws while dealing with the question whether the accident occurred due to involvement of the 2<sup>nd</sup> respondent's lorry or the car in which the claimant travelled, and finally, based on the evidence placed on record apportioned the negligence in the ratio of 50%: 50% as against the driver of the lorry and the claimant.

On due consideration of the factual aspects of the case and the evidence on record, the trial Court observed that there is ample evidence in the case record to hold that the accident occurred not only due to the use of the claimant's car but also due to the use of the 2<sup>nd</sup> respondent's lorry.

The claimant was aged about 31 years by the date of the accident. He did bachelor's degree in Engineering as noticed from the contents of Ex.A13 – Study certificate. The claimant, having pleaded that he was getting substantial income through cultivation, produced photocopy of patta passbook wherefrom it could be construed that he owned and possessed wet land of Ac.2.25 guntas in three different survey numbers. Ex.A8 is the income-tax returns and Ex.A12 is the original partnership deed entered by the claimant with others for doing partnership business under the name and style of Sri Satya Sai Constructions. On evaluating the above-mentioned documents, the Tribunal had rightly assessed claimant's monthly income at Rs.11,000/- per month.

Ex.A3 – wound certificate issued by Civil Assistant Surgeon would indicate that the claimant received six lacerated injuries and one abrasion. Ex.A4 - case sheet maintained in SVIMS, Tirupati would clearly indicate swelling on right fronto parietal temporal subgaleal, fracture of right clavicle, fracture to 5<sup>th</sup> and 6<sup>th</sup> ribs on right side. For such

injuries, he took treatment as in-patient under the care and supervision of Dr.G.R.Chandrashekar who was the Assistant Professor at SVMS. On careful consideration of the evidence of PW2, who spoke about the nature of injuries sustained by the claimant with reference to the case sheet wherein it was mentioned that CT Scan of Brain, X Ray of Chest were taken, and it appeared to him after seeing them that there was swelling to right fronto parietal temporal region and fracture of right clavicle and fracture of 5<sup>th</sup> and 6<sup>th</sup> ribs on right side, and for such injuries, he was given treatment as in-patient from 05.05.2001 to 24.05.2001. Upon consideration of the nature of injuries sustained by the claimant in the above-mentioned road accident and the discharge summary issued by SVIMS Hospital, the Court opined that the claimant required bed-rest at least for a period of two months to regain normal position. The Tribunal, after coming to such opinion, granted compensation of Rs.33,000/- towards loss of earnings during the period of treatment based on the assessment it made as to his monthly income at Rs.11,000/- upon consideration of the claimant's evidence in this regard and Exs.A8 & A12 to A14 produced by him to prove his income.

The Tribunal had rightly awarded compensation of Rs.25,000/- under the head of Medical expenditure and extra nourishment as it was found from the material on record that

he incurred substantial expenditure under the said head. The compensation of Rs.25,000/- towards pain and suffering as awarded by the trial Court appeared to be reasonable as it was evident from the material on record that the claimant suffered head injury and fractures to two ribs on right side and fracture to right clavicle. Ex.A15 - disability certificate procured by the claimant was rightly disbelieved by the Tribunal as the Doctor, who issued the said certificate, was not examined. The Tribunal appreciated the evidence on record in a proper perspective and awarded total compensation of Rs.1,07,400/- under various heads and directed the appellant and the owner of the lorry bearing No.TN23E 4555 to pay 50% of the total compensation as there was substantial material in the case record to believe the involvement of the car driven by the claimant in the accident.

Inasmuch as the above findings of the Tribunal appear to be not suffering from factual or legal infirmities, I do not see any reason to interfere with the same.

As no merit is found in the Civil Miscellaneous Appeal, the same is hereby dismissed.

In view of the judgment delivered in C.M.A.No. 1704 of 2010, Cross-Objections (SR). 32270 of 2011 filed by the claimant seeking to enhance the compensation awarded by the Tribunal and direct the appellant and the 2<sup>nd</sup> respondent

to pay such amount with 12% interest, do not stand for consideration, and the same are hereby dismissed. There shall be no order as to costs.

MS. J. UMA DEVI, J

11.10.2018

bcj

