

SMT JUSTICE T. RAJANI

**MACMA No.2358 of 2012, MACMA (SR) No.45302 of 2012 &
MACMA.No.1818 of 2013**

COMMON JUDGMENT:

These appeals are preferred by the appellants, who are the 3rd respondent-insurer of the auto, the petitioner-claimant and the 1st respondent-APSRTC respectively before the Court below, questioning the judgment, dated 20.12.2011, passed by the District Judge, Anantapur, in O.P.No.338 of 2008.

The grounds on which MACMA.No.1818 of 2013 is filed are that the Court below went wrong in coming to the conclusion that the accident occurred due to rash and negligent driving of the bus driver; the Court below failed to see that the accident occurred due to negligence on the part of the auto driver; the Court below failed to see that as per the accident report, the auto driver is responsible for the accident; the Court below ought to have seen that the claimant, who was sitting on the extreme back side of the seat, has not taken proper care, due to which he jumped between the seat rows and got crushed within the bus, and that the amount of compensation awarded by the Court below, along with interest at 8% per annum, is excessive.

MACMA.No.2358 of 2012 is filed on the grounds that there was absolutely no negligence on the part of the driver of the auto; that the Court below failed to appreciate the fact that the accident occurred due to sole negligence of the driver of the RTC bus and the Court

below went wrong in fastening the liability on the owner and the insurer of the auto.

MACMA.Sr.No.45302 of 2012 is filed on the grounds that the Court below though arrived at compensation of Rs.39,89,000/-, did not award the same, as the claim was made only for Rs.20,00,000/- and the Court below ought to have seen that just compensation has to be awarded.

2. Heard the learned counsel for both sides.

3. For the sake of convenience, the parties would be referred to as arrayed in the Court below.

4. The counsel for the 3rd respondent contends that even the case of the petitioner is that the accident occurred solely due to the negligence of the driver of the RTC bus, who drove it in a rash and negligent manner. He relies on the evidence of the petitioner, who was examined as PW.1, wherein he narrated the manner of the accident and stated that on 19.05.2007 at about 2.00 p.m., while he was travelling in RTC bus from Penukonda to Anantapur and when the bus reached near Mounagiri Ashramam, the driver of the bus drove it in a rash and negligent manner and could not control the bus and, in that process, he dashed the bus against the auto, which was coming from opposite direction, and after hitting the auto, the bus went forward and rammed into road side ditches and fields. The Court below, by considering that in Ex.A1, which is the FIR, it was mentioned that the driver of the auto was also going in high speed,

attributed negligence to the driver of the auto also and fixed the liability jointly and severally on all the respondents.

5. A perusal of Ex.A1, which contains the statement of one Pujari Sangaiah, who is also cited as a witness in the charge sheet, would nevertheless show that he mentioned that the auto was going at a speed. But, he ultimately stated that the accident occurred due to rash and negligent driving of the driver of the bus. The manner of the accident as stated by PW.1 receives corroboration from the statement given by the said Pujari Sangaiah. It shows that the bus, after hitting the auto with high speed, rammed into the ditches and fields by the side of the road.

6. The charge sheet, which is marked as Ex.A3, does not offer any assistance in assessing the negligence of the drivers. The witnesses, who spoke about the occurrence, are LWs.1 and 2. LW.1 is none other than the said Pujari Sangaiah, who filed the report, and the other witness is one Pujari Vennela. Based on the statement that the auto was going at a speed, the charge sheet seems to have been filed on both the drivers. There seems to be no investigation done by the Investigating Officer further, to come to a conclusion that there was negligence on the part of the driver of the auto also. Unless the charge sheet spells out the specific reasons for arriving at the conclusion that there was negligence on the part of the auto, it cannot be said that the accident occurred due to the negligence of the driver of the auto, more

so in the light of the evidence of PW.1, who alleges negligence only on the part of the driver of the bus.

7. The Court below completely relied on the evidence of RW.1, who stated that the auto was also driven in a rash and negligent manner, and concluded that there was negligence on the part of the driver of the auto also. In the considered opinion of this Court, the self-serving statement of RW.1 cannot become a basis for assessing negligence. The failure of respondent No.3 to examine the auto driver, as contended by respondent No.1, does not have any effect when the truth of the case can be gathered from the evidence available on record. Moreover, this amounts to *res ipsa loquitor* where the thing speaks for itself. The manner in which the bus rammed into the fields after dashing against the auto, would itself give a strong inference that the bus was going in an uncontrollable speed.

8. Coming to the amount of compensation, a perusal of the award would show that the Court below arrived at a figure of Rs.53,87,000/-, out of which Rs.14,00,000/-, which was gross loss of income under career of progression, was deducted and finally the compensation was arrived at Rs.39,87,000/-. But, it was restricted to Rs.20,00,000/- considering that the claim was made only for Rs.20,00,000/-.

9. The counsel for the claimant now relies on the judgment of the Apex Court in **RAJESH v. RAJBIR SINGH**¹ to contend that the compensation has to be just and it can exceed the claimed amount.

¹ (2013) 9 SCC 54

The counsel does not put forth any further arguments, except contending that the compensation arrived at by the Court below i.e., Rs.39,87,000/- should be granted. Thus, the claimant is entitled to compensation of Rs.39,87,000/-, as against Rs.20,00,000/- awarded by the Tribunal.

10. Accordingly, MACMA.No.2358 of 2012 filed by the 3rd respondent is allowed; MACMA (SR) No. 45302 of 2012 filed by the claimant is partly allowed and the judgment of the court below stands modified; and MACMA.No.1818 of 2013 filed by the 1st respondent – APSRTC stands dismissed on the aspect of negligence and liability and it is held that the 1st respondent alone is liable to pay the compensation amount.

11. Since the counsel for the 3rd respondent submits that as per the directions of this Court passed on 25.07.2012 in MACMA.MP.No.4364 of 2012, 50% of the amount awarded was deposited, the 3rd respondent is at liberty to recover the said amount from the 1st respondent without filing an application.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

T. RAJANI, J

August 10, 2018
v v