HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA Nos.2109 and 2330 of 2005

Date: 06.09.2018

<u>MACMA.No.2109 of 2005 :</u>

Between :
Pogula Venkataiah and others

... Appellants

And

D. Srinivasa Reddy and others

... Respondents

<u>MACMA.No.2330 of 2005 :</u>

Between :
National Insurance Company Limited and another

... Appellants

And

Pogula Venkataiah and others

... Respondents

COUNSEL FOR APPELLANTS : Sri G. Ramakrishna,
for Mr. V. Sri Hari

COUNSEL FOR RESPONDENTS : Mr. Sreemannarayana
Vettikuti for N. Mohan Krishna
Standing Cousnel for National
Insurance Co. Ltd.

THE COURT MADE THE FOLLOWING:

COMMON JUDGMENT : (per Hon'ble Sri Justice Gudiseva Shyam Prasad)

Since both the appeals arise out of the Common Award dated 22.02.2005 in O.P.No.1402 and 1403 of 2002, insofar as they pertain to O.P.No.1403/2002, they are heard together and being disposed of by this common judgment.

Aggrieved by the Award dated 22.02.2005 in O.P.No.1403 of 2002 passed by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Warangal (for brevity "the Tribunal"), while the claim petitioners therein filed MACMA.No.2109 of 2005 seeking enhancement of compensation, the National Insurance Company Limited, representing respondent No.2 and 3 in the said claim petition filed MACMA.No.2330 of 2005 contending that the compensation awarded by the Tribunal is highly excessive.

The brief facts of the case are that the claim petitioners have filed two claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for brevity "the Act"), being the dependents of the deceased, Pogula Raja Shekar and his wife Pogula Saroja, who died in a motor vehicle accident that occurred on 19.11.2002. They filed O.P.No.1403 of 2002 claiming compensation of Rs.35,00,000/- for the death of the deceased Pogula Raja Shekar; and O.P.No.1402 of

2002 claiming compensation of Rs.5,00,000/- for the death of the deceased P. Saroja.

The case of the claim petitioners is that on 19.11.2002 at 6.30 p.m., while both the deceased were travelling in the Commander Jeep bearing No.AP-36U/3197 to go to Yellandu from Mahabubabad, one Oil Tanker bearing No.AP-16U/7439 of respondent No.1 driven in a rash and negligent manner came in the opposite direction and dashed the Jeep near the Tiles Factory of Nehru Nagar, resulting in instantaneous death of P. Raja Shekar and severe injuries to P. Saroja, who succumbed to the injuries while undergoing treatment in the Hospital. Petitioner Nos.1 and 2 are the parents and petitioner Nos.3 to 6 are the children of the deceased P. Raja Shekar. The deceased was hale and healthy and was working as Deputy Superintending Engineer in Singareni Collieries Company Limited, Kothagudem.

Respondent Nos.1 and 3 remained exparte. Respondent No.2 – Insurance Company filed written statement denying its liability and also the rash and negligent driving on the part of the driver of the Oil Tanker. It was further averred that the claim of the claim petitioners is highly excessive, that driver of the offending Oil Tanker was not having valid driving licence at the time of accident and hence sought for dismissal of the claim petition. The Tribunal on consideration of the evidence of witnesses has partly allowed O.P.No.1403 of 2002 by the impugned Award awarding compensation of Rs.8,98,296/- with interest @ 9% per annum from the date of petition till realisation.

Aggrieved by the Award dated 22.02.2005 in O.P.No.1403 of 2002, the claim petitioners have preferred MACMA.No.2109 of 2005 and respondent Nos.2 and 3, representing the National Insurance Company Limited has preferred MACMA.No.2330 of 2005.

Heard the arguments of the learned counsel for the claim petitioners. The learned Standing Counsel for the National Insurance Company Limited is present. Perused the impugned Award dated 22.02.2005.

Learned counsel for the claim petitioners submitted that the Tribunal, on Issue No.1, having considered that there was contributory negligence on the part of the driver of the offending Oil Tanker, apportioned the liability @ 60% to the driver of the offending Oil Tanker and 40% to the driver of the Jeep. The contention of the learned counsel for the claim petitioners is that there is no negligence on the part of the Jeep driver and the findings of the Tribunal in that regard are incorrect. In support of her contention, learned counsel placed reliance on the judgment in

MEERA DEVI AND ANOTHER Vs. H.R.T.C. AND OTHERS[1] and submitted that in order to prove the contributory negligence on the part of the driver of the Jeep, there must be cogent evidence.

We find force in the argument advanced by the learned counsel for the claim petitioners. In the instant case, there is no specific evidence to prove that the accident has taken place due to the rash and negligent driving on the part of the driver of the Jeep. The factum of contributory negligence has to be pleaded and proved by the parties. The Tribunal suo-motu cannot give a finding as regards the aspect of contributory negligence. In P. RAJESWARI v. HOTEL IMPERIAL[2], it was held that contributory negligence has to be pleaded and proved and the Court cannot infer the contributory negligence without there being any evidence.

In the instant case, the Tribunal, without there being any evidence, has inferred contributory negligence on the part of the Jeep driver and therefore the same is liable to be set aside.

It is also pertinent to note that the Tribunal is required in law to give its findings on probabilities and not on proving the offence beyond reasonable doubt, as is done by a Criminal Court. The said

[1] (2014) 4 SCC 511
[2] 1989 ACJ 454 (MADRAS)

proposition of law was laid down in RADHA v. ASHOK KUMAR[3].

In the instant case, the Tribunal has not considered the evidence of PW.3, who was an eye witness to the accident, and the contents of charge sheet and came to its own conclusion basing on the cross-examination of PW.3, wherein he stated that the road was straight and having ups and downs. Therefore, the Tribunal went wrong in not fixing the entire liability on the part of the driver of the offending Oil Tanker, though there is sufficient material on record to that effect.

It is contended that the Tribunal without there being any evidence on record has arrived at the conclusion that there was contributory negligence and the said findings are under challenge in these appeals. The Tribunal observed that the accident took place during evening hours at 6.30 p.m. As per Ex.A.5 - copy of charge sheet, the driver of the Oil Tanker was driving it in a high speed. As per the evidence of PW.3, the road was straight, but with ups and downs. There is no evidence with regard to the speed of the Jeep, which was over-loaded. On these grounds, the Tribunal came to the conclusion that there was contributory negligence on the part of both the vehicles involved in the accident.

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[3] 1989 ACJ 379 (ALLAHABAD)

A perusal of the evidence of PW.3, an eye witness and a passenger travelling in the Jeep involved in the accident, reveals that he boarded the Commander Jeep bearing No.AP-36U/3197 at Mahabubabad Railway Station to go to his native place - Yellandu, and that when he reached near the Tiles Factory of Nehru Nagar, one Oil Tanker bearing No.AP-16U/7439 came in the opposite direction driven rashly and negligently and dashed their Jeep. Thus, PW-3 had clearly deposed to the effect that the accident occurred due to the rash and negligent driving of the driver of the Oil Tanker. A perusal of the evidence of PW.3 reveals that the road was straight with ups and downs. The fact that the road was straight having ups and downs is not a sufficient ground to come to the conclusion that due to the rash and negligent driving of both the vehicles the accident occurred. Contributory negligence cannot be inferred based on the fact that the road was straight having ups and downs. The findings of the Tribunal based on these facts cannot be accepted in the light of the other material available on record. PW.3 clearly deposed that the accident occurred due to the rash and negligent by the driver of the Oil Tanker. He was an eye witness to the accident as he was travelling in the Jeep at the time of accident. Therefore, his evidence can be considered as cogent and trustworthy. Further, the contents of Ex.A.5 charge sheet clearly reveals that the police investigated the offence and registered a case against the driver of the Oil Tanker under Section 304-A IPC. Ex.A.5 Charge Sheet was relied upon by the claim petitioners to prove the negligence on the part of the driver of the Oil Tanker. A perusal of the charge sheet reveals that the Investigation Officer has examined nearly 47 witnesses in this case and came to the conclusion that the driver of the Oil Tanker coming from Yellandu drove the vehicle in a rash and negligent manner on wrong side of the road and dashed against the Jeep in which the deceased was travelling. In the said accident, 7 persons succumbed to the injuries. The remaining passengers LWs.1 to 8 received simple and grievous injuries. Therefore, the investigation reveals that the accident occurred due to the rash and negligent driving by the driver of the Oil Tanker, which is corroborated by the direct evidence of PW.3, who was an eye witness to the accident. Therefore, the contention of the Insurance Company that there is contributory negligence on the part of the driver of the Jeep is not proved. Hence, the said findings of the Tribunal are set aside, holding that the driver of the Oil Tanker alone responsible was for the accident.

The other contention raised by the learned counsel for the claim petitioners is that the Tribunal has not awarded just compensation by taking into consideration the income of the deceased and after deducting only $1/4^{th}$ towards personal expenses of the deceased. It is submitted that the Tribunal has erroneously deducted 1/3rd towards personal expenses of the deceased, whereas the deceased was having 6 dependents on him. As per the decision of the Apex Court in SMT. SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER[4], when the deceased has six dependants, 1/4th income has to be deducted towards personal expenses. Para-14 of the said judgment reads as under:

> "14. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six."

As a matter of fact, the judgment in SARLA VERMA (supra) was rendered subsequent to the accident in this case. However, the said judgment can be made applicable to this case, as the appeal is continuation of original claim petition and the law holding the field now only is to be made applicable. Therefore, as per the decision in SARLA VERMA (supra), after deducting 1/4th of the income

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[4] 2009 (6) SCC 121

towards personal expenses of the deceased, the remaining income has to be taken towards contribution to the family.

It is further contended by the learned counsel for the claim petitioners that the multiplier applied by the Tribunal was based on BHAGWANDAS v. MOHD. ARIF[5], which is not applicable now in the light of the decision rendered in SARLA VERMA (supra). The deceased was aged 50 years old by the date of accident. The multiplier applied was '5' for his age, whereas in the light of the judgment in SARLA VERMA (supra), the appropriate multiplier applicable to the age group of 51 - 55 years is '11'.

The Tribunal has taken the annual net income of the deceased as Rs.2,01,840/-, but it has erroneously deducted 1/3rd towards personal expenses. Following the decision in SARLA VERMA (supra) and keeping in view the number of dependents on the income of the deceased, only 1/4th is deductible towards the personal expenses. Therefore, after deducting 1/4th towards personal expenses of the deceased, the contribution of the deceased to the family comes to Rs.1,51,380/-. If the same is multiplied by appropriate multiplier '11' as determined in SARLA VERMA (supra), the quantum of compensation comes to Rs.16,65,180/-. Apart from that, the Tribunal awarded a further sum of Rs.2,000/- towards funeral expenses and Rs.15,000/- towards loss of estate.

[5] AIR 1988 AP 99

Thus, the claim petitioners are entitled for a total compensation of Rs.16,82,180/- (Rs.16,65,180/- + Rs.2,000/- + Rs.15,000/-).

In the result, while dismissing MACMA.No.2330 of 2005 filed by the National Insurance Company Limited, MACMA.No.2109 of 2005 filed by the claim petitioners is partly allowed, enhancing the compensation from Rs.8,98,296/- to Rs.16,82,180/- (Rupees sixteen lakhs eighty two thousand one hundred and eighty only) with proportionate costs and interest @ 9% per annum from the date of petition till realisation. The finding of the Tribunal with regard to the contributory negligence is set aside. Consequently, respondent No.3 – Insurance Company is directed to deposit the balance amount within one month from the date of receipt of a copy of this judgment. On such deposit, the claim petitioners are permitted to withdraw the amount as per the apportionment made by the Tribunal. No order as to costs.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

06.09.2018.
Msr

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