THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 1047 OF 2011

JUDGMENT:

The appellant is the 2nd respondent in M.V.O.P.No.531 of 2004, filed this appeal being aggrieved by the award and decree passed in M.V.O.P.No.531 of 2004 dated 12.01.2011 by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nellore, granting an amount of Rs.1,75,000/- against the claim of Rs.3,50,000/- for the injuries sustained by the 1st respondent in the motor accident occurred on 18.06.2003.

2. The 1st respondent/injured filed claim petition under Section 166 of the Motor Vehicles Act, 1988 alleging that he was resident of Nellore Town. On 18.06.2003, when he was proceeding on a motorcycle along with one Sivanarayana, towards Mannavarappadu quarry and when they were proceeding near Ramaiah thota after crossing Sri Lanka colony, Kothuru, the Tractor bearing No.AP21D 3253 came in opposite direction driven by its driver in a rash and negligent manner with high speed in a zig zag manner and dashed the motor cycle, as a result the 1st respondent fell down and sustained grievous injuries. Immediately, he was admitted in Government hospital, Nellore and later shifted to Jaya Bharath hospital where he took treatment as inpatient for three months and thereafter he took treatment as outpatient.

He had spent nearly Rs.1,50,000/- for the treatment. He sustained permanent disability and he is unable to walk freely and his left leg was shortened. He underwent pain and suffering, for which he made a claim for compensation of Rs.3,50,000/- against the appellant and 2nd respondent. He further states that he was aged about 32 years at the time of accident and he was a stone metal contractor and used to earn Rs.10,000/- per month.

3. The 2nd respondent filed counter contending that he is a resident of Muthaluru Village, Rudravaram Mandal, Kurnool District. He was the owner of the Tractor bearing No.AP21D 3253. He sold the said tractor to one Kata Sudhakar Reddy S/o.Sundara Rami Reddy of Vidavalur Village of Nellore District on 08.06.2003. He signed on No objection certificate, executed a sale letter in favour of Sudhakar Reddy and delivered the tractor to him. He was under the impression that the said vehicle was transferred in the name of Kata Sudhakar Reddy as he signed No objection certificate at RTO office. On receiving the Court notice and on enquiries, he found that Kata Sudhakar Reddy sold the tractor to the appellant - Duvvuru Siva Kumar Reddy, who is a resident of Magunta Layout of Nellore. At the time of accident, the tractor was in possession of appellant being the real owner and the accident took place near Ramaiah thota in Nellore district. He further stated that having sold the vehicle, he was not the owner of the vehicle and he was not in

possession of the offending vehicle at the time of accident and the driver was not working under him. After the accident, a case was registered in Nellore Rural Police Station. The appellant took delivery of the tractor from the police station representing that he was the real owner of the tractor. The driver who drove the tractor at the time of accident was the employee of the appellant. Therefore, there was no relationship of 'Master and Servant' between 2nd respondent and the driver. So, he would not be held vicariously liable to pay any compensation. He also denied the nature of accident, nature of injury sustained by the 1st respondent and the treatment he had received.

4. The appellant filed counter denying the averments of the claim petition and he pleaded that he has nothing to do with the Tractor bearing No.AP21D 3253 is concerned and so he is not liable to pay any compensation to the 1st respondent.

5. Based on the above pleadings, the Tribunal framed the following issues for its consideration:

1) Whether the accident in question is occurred, if so, was it due to the fault of the driver of Tractor bearing registration No.AP.21.D.3253?

2) Whether the claimant is entitled to the compensation, if so, to what amount and from which of the respondents?

3) To what relief?

6. During the course of trial, PWs 1 to 4 were examined and Exs.A.1 to A.9 and Exs.C.1 and C.2 were got marked. On the other hand, RW1 and RW2 were examined and Ex.B.1 was marked for the respondents.

7. The Tribunal, considering the evidence of PW1 and documents Exs.A.1 to A.5, came to the conclusion that the accident was occurred due to the rash and negligent driving of the driver of the offending vehicle i.e., Tractor bearing No.AP21D 3253 and in the accident, the 1st respondent sustained grievous injuries.

8. The Tribunal, considering the evidence of PW1, PW2 and PW3 and the documents – Ex.A.2 (wound certificate), Ex.A.6 (Bunch of Medical bills), Ex.A.7 (Receipt for Rs.4630/-), Ex.A.8 (Bunch of other Medical bills) and Ex.A.9 (Bunch of X-rays) along with Ex.C.1 (Case sheet) and Ex.C.2 (X-ray), opined that even though the 1st respondent claimed 30% functional disability, the 1st respondent may not have such a disability for earning income is concerned and it has taken 10% disability. The Tribunal, considering the injuries received by the 1st respondent and the treatment, granted compensation under the following heads:

For pain and suffering	:	Rs.37,000/-
For loss of income for six months @ Rs.4,000/- p.m.	:	Rs.24,000/-
Medical expenses	:	Rs.54,000/-
For permanent disability	:	Rs.60,000/-

The Tribunal granted total compensation of Rs.1,75,000/- and the same is payable by the appellant and the 2nd respondent jointly with proportionate costs and interest @ 7% per annum.

9. The Tribunal, based on the evidence of RW1 and RW2 and Exs.A.1 and A.5, came to the conclusion that 2nd respondent was the registered owner of the tractor as per Ex.B.1 and he sold the tractor to one Kata Sudhakar Reddy S/o.Sundara Rami Reddy of Vidavalur Village on 08.06.2003 and in turn the same was sold to the appellant – Duvvuru Siva Kumar Reddy. The appellant was in possession of the offending vehicle and he got released the vehicle from the Police Station seized in Crime No.143 of 2003 of Nellore Rural Police Station as per Exs.A.1 and A.5.

10. The Tribunal based on the evidence on record came to the conclusion that the appellant is the real owner of the tractor and he is in possession and control of the offending vehicle along with the driver. The offending vehicle was used by the appellant for carrying the metal stones from Mannavarappadu quarry. Based on the said evidence, the Tribunal held that the 2nd respondent being the registered owner, the appellant being the real owner who is in possession and control of the offending tractor are jointly liable to compensate the claimant.

11. Sri V.Roopesh Kumar Reddy, learned counsel for the appellant, would contend that the 1st respondent is the registered owner of the offending vehicle – tractor and the appellant is nothing to do with the offending vehicle. He further contended that mere releasing of the offending vehicle without there being any legal evidence, the liability would not be fastened on the appellant. In the absence of any legal evidence to the effect that the appellant is the real owner and in control of the offending vehicle and the driver of the offending vehicle is under his control would not be believed. Hence, the appellant is not liable to pay the compensation and the Tribunal grossly erred in fastening the liability on the appellant and he has not disputed the quantum of compensation awarded by the Tribunal.

12. Per contra, Sri P.Nagender Reddy, learned counsel for the 2nd respondent herein, would contend that the Tribunal has rightly came to the conclusion that the accident was occurred due to rash and negligent driving of the driver of the offending vehicle with high speed, based on the evidence of PW1 and Exs.A.1 and A.5. In the accident, the 1st respondent herein sustained grievous injuries and the Tribunal rightly granted compensation of Rs.1,75,000/- based on the evidence available on record. Based on the evidence of PWs 1 to 3 coupled with documents – Exs.A.2, A.6, A.7, A.8 and A.9, granting of compensation could not be said to be illegal and arbitrary.

He further contended that the Tribunal based on the evidence of RW1 and RW2 and Exs.A.1 and A.5, came to the conclusion that the appellant is the real owner and in possession and control of the offending vehicle along with driver who caused the accident. As per the evidence of RW1 and RW2 and Exs.A.1 and A.5, the appellant got released the vehicle from the policy custody and in the evidence, it came to light that the appellant is in control and possession of the offending vehicle along with driver and he was using the offending tractor for transportation of mining metal stones from Mannavarappadu quarry being the stone metal contractor. Hence, the Tribunal has rightly fastened the liability on the registered owner as well as the appellant – real owner and the same could not be found fault with.

13. In the facts and circumstances of the case and having heard the rival contentions of the counsel, this Court found that the 1st respondent/claimant sustained grievous injuries in the accident occurred on 18.06.2003 due to rash and negligent driving of the offending vehicle driven by its driver and dashed against the motor cycle of the claimant. The Tribunal rightly held that the accident was occurred due to rash and negligent driving of the driver of the offending vehicle, based on the evidence of PW1 and Exs.A.1 and A.5.

14. The Tribunal, considering the injuries received, the treatment undergone by the injured claimant and the

documentary evidence – Ex.A.2 and Exs.A.6 to A.9, came to the conclusion that the 1st respondent/injured claimant spent an amount of Rs.54,000/- towards medical expenses and in the accident he sustained functional disability of 10% though claimed 30% disability and granted compensation of Rs.1,75,000/- with proportionate costs and interest @ 7% per annum and payable by the appellant and 2nd respondent jointly and severally and the same could not be found fault with.

15. The 2nd respondent is the registered owner of the offending vehicle i.e., Tractor bearing No.AP21D 3253 and as per the evidence of RW2, he sold the said vehicle to Kata Sudhakar Reddy on 08.06.2003 and No objection certificate was executed along with the sale letter in favour of Sudhakar Reddy and delivered the tractor to him. The said Sudhakar Reddy in turn sold the offending vehicle to the appellant – Duvvuru Siva Kumar Reddy and the appellant was in possession of the offending tractor and in control of the driver of the offending vehicle at the time of accident, as the said fact was evidenced from Exs.A.1 and A.5 and as he was got released the vehicle from the police station. It appears that he used the offending tractor for transportation of metal stones from Mannavarappadu quarry being the contractor.

16. In those circumstances, the Tribunal has rightly fastened the liability on the registered owner as well as the

real owner as the accident was caused due to the rash and negligent driving of the driver of the offending vehicle, who was under the control of appellant/real owner and the same could not be found fault with. Further, the appellant used the offending tractor, in utter violation of law, without taking insurance policy and the motor vehicle tax. He paid the motor vehicle tax after the accident and got released the offending tractor from the police. The police strangely released the tractor to the appellant, on the strength of the Tax payment receipt.

17. Hence, the appeal is dismissed, confirming the award and decree dated 12.01.2011 passed in M.V.O.P.No.531 of 2004. No order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE M.GANGA RAO

23-11-2018
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THE HON'BLE SRI JUSTICE M.GANGA RAO

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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