

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT.JUSTICE T.RAJANI

MACMA Nos.217 & 218 OF 2008

COMMON JUDGMENT: (per Hon'ble Sri Justice C.Praveen Kumar)

Since both the appeals arose against an accident that occurred on 07.12.2002 and as the claimants are the Legal Representatives of the two deceased, these appeals are disposed of by this common judgment.

2. The facts in issue are as under:

The claimants filed applications under Section 166 of Motor Vehicles Act, 1988, claiming compensation of Rs.85 lakhs in O.P.No. 3059 of 2003 for the death of their mother Smt.K.Saritha Reddy and Rs.75 lakhs in O.P.No.3058 of 2003 for the death of their father by name Sri K.**Anil** Kumar Reddy, in the accident which took place on 07.12.2002. It is stated that on that day while the two deceased were proceeding to Tirupathi from Hyderabad to attend a marriage of their relatives at Tirupathi, in a car bearing No.AP9AF 2266, driven by one S.K.Abdul Razzack and when they reached near K.M.Stone of National highway No.7, within the territorial limits of Kanimetta village of Addanki Mandal, Mahabubnagar District, a lorry bearing No.KA06/8439 coming from opposite direction, driven by its driver in a rash and negligent manner, is said to have dashed the car in which the two deceased were traveling. It is stated that one Vali Khan is the

driver of the said lorry, who drove the lorry in a high speed and in a rash and negligent manner, which led to the accident. The driver of the car, along with said K.Saritha Reddy and her husband died due to multiple injuries sustained in the accident. In respect of the said accident, a case in Crime No.137 of 2002 came to be registered against the driver of the said lorry. It is stated that the said accident was witnessed by one Dharma Reddy, brother's son of D.Ranga Reddy. The claimants are the parents and children of the two deceased.

3. The averments in the petition would show that both the deceased are reputed business persons. Sri K.Anil Kumar Reddy was the Vice President of Builders Association in Twin cities of Hyderabad. Sri K.Anil Kumar Reddy and Smt.Saritha Reddy were associated with reputed business firms. They were partners of M/s.Saritha Estates, M/s.Swarnanadra Housing Projects and M/s.Rapid Softnet Works Limited. Apart from that, Smt. K.Saritha Reddy owned and possessed agricultural lands in Machilipatnam of Krishna District and Mungod Village of Nalgonda District apart from having commercial properties at Aditya Enclave, Ameerpet, Hyderabad. It is stated that the deceased Smt.Saritha Reddy used to pay huge income tax to the income tax department on the income derived by her on various business establishments and agriculture. Due to the sudden demise of both the deceased, the entire family was put to hardship and their children became orphans and as such sought compensations, as referred above.

4. The first respondent, who is the owner of the lorry, remained *ex-parte*. The second respondent namely The New India Assurance Company Limited, filed a counter opposing the claim petition. According to him, the accident occurred due to rash and negligent driving of car in which the deceased were traveling and that the accident was not due to negligence of the driver of the lorry. It is the specific case of the respondent that the accident took place when the driver of the car was overtaking a lorry moving towards Kurnool side and in that process dashed a lorry coming from opposite direction. A reading of the FIR, inquest and charge sheet would show that the accident occurred when the car was overtaking the lorry which was proceeding to Kurnool. In any event, it is stated that claim made is excessive.

5. Basing on the above pleadings, the following issues were framed:

1. "Whether the accident took place on 07.12.2002 due to rash and negligent driving of lorry bearing No. KA06/8439 by its driver?
2. Whether the petitioners are entitled to claim compensation? If so, to what amount and from whom?
3. To what relief?"

6. On behalf of claimants, PWs.1 to 4 were examined and got marked Exs.A1 to A35. On behalf of the second respondent, RWs.1 and 2 were examined and Exs.B1 and B2 were marked. After considering the evidence available on record, the trial Court awarded compensation to an extent of Rs.51,13,828/- in

O.P.No.3059 of 2003 and Rs.53,94,495/- in O.P.No.3058 of 2003 with interest @7.5% per annum from the date of petition till the date of payment. Challenging the said awards, the claimants preferred the present appeals.

7. Sri Naresh Byrapaneni, learned counsel for the appellant/insurance company would contend that the accident took place due to negligence of the driver of the car in which two deceased were traveling. In other words, he submits that as per the averments in the charge sheet, inquest and FIR, accident occurred when the vehicle was overtaking the lorry which was proceeding towards Kurnool and dashed against the lorry coming from opposite side. According to him, negligence if any is on the part of driver of the car only.

8. The said submission is opposed by the learned counsel appearing for respondents/claimants stating that there is no material to support the same. He further submits that multiplier adopted by the Court below in calculating loss of earnings is incorrect. He further contends that even assuming for the sake of argument that the accident took place due to negligence of the driver of the car, who was trying to overtake, but definitely every overtaking does not amount to rash and negligent driving. Every overtaking on a highway does not amount to rash and negligent driving, when there is no evidence to show that driver of the car was driving at a high speed or in a rash and negligent manner.

9. Therefore, the issue that arises for consideration is whether there was any rash and negligent act by the driver of the car?

10. Admittedly, PW1 is an eye witness to the incident. The claimants examined PW2, who spoke about the manner in which the accident took place. According to him, on 07.12.2002, at about 07.30 a.m., he along with his uncle was proceeding to Kothakota village on a motorbike. At about 08.00 a.m., while they were crossing Burravaagu, at kilometer stone 125/6 on the National Highway (Hyderabad – Bangalore National Highway) in the limits of Kanimetta village, they witnessed a car bearing No.AP9AF 2266 proceeding from Hyderabad to Kurnool side. They also noticed a lorry bearing No.KA06 8439 coming from the opposite direction. According to him, the said lorry was driven by its driver in a rash and negligent manner and with a high speed. It is stated that the said lorry dashed against the car bearing No. AP9AF 2266, due to impact of said accident, the driver, one male and female person died on the spot. Immediately, they went to Kothakota Police Station where his uncle gave a written report. In the cross examination of PW2, it was elicited that he saw the accident and explained the manner in which the accident took place. The suggestion given to him by the Insurance company that the car was involved in the accident, while the driver was overtaking another vehicle, was denied by him. He further admits that he was not called as a witness in the criminal case filed against driver of the offending vehicle. The

suggestion that he did not witness the accident was denied by him. He further submits that one Ranga Reddy, who was with him and who lodged a report setting the law into motion, died on 21.07.2005 and as such he could not be summoned to the Court.

11. From the evidence of this witness, it is very clear that PW2 along with his uncle Ranga Reddy saw the accident and immediately they lodged a report wherein they categorically mentioned about the rash and negligent driving by the driver of the lorry. It is also to be noted here that though the name of PW2 was shown as eye witness, but in the inquest report, for the reasons best known, he was not examined in the criminal case. Be that as it may, learned counsel for the appellant Insurance company submits that column No.3 of the inquest panchanama clearly indicates that the accident took place when the car in which the two deceased were travelling tried to overtake another vehicle proceeding ahead of the car. He took us through column No.3 of the inquest panchanama to show as to the manner in which the accident took place.

12. It is no doubt true that the inquest report is not a substantial piece of evidence. At most, it can be used to know the cause of death of both the deceased. Even otherwise, in cases of this nature, one has to prove the contents of the report by examining some persons who are connected to the inquest proceedings. Infact, no effort was made by the counsel for the

Insurance company to put any suggestion to PW2 with regard to the contents in column 3 of the inquest panchanama.

13. Learned counsel for the appellant would submit that though they made effort to summon the Inspector of Police, to speak about the contents of the inquest, but he refused to co-operate with them. That being the position, it can be said that the contents of the inquest panchanama cannot be made the basis to overthrow the oral evidence adduced before the Court. At the same, it is also to be noted that column No.15 of the inquest panchanama, which contains the gist of the opinion of the inquest panchayatdars, clearly indicates that the accident took place due to rash and negligent driving of the driver of the lorry. It would be useful to extract relevant portion, which is as under:

“ముతుని యొక్క మరనకారణములు పంచులను విచారించగా చనిపోయిన వ్యక్తి వారి యొక్క స్వంత కారు నెం.AP 9AF 2266లో ప్రయాణము చేయుచు తిరుపతిలో జరుగబోయే పెండ్లికి హాజరు అగుటకై హైదరాబాదు నుండి బయలుదేరి కర్నూలు మీదుగ వచ్చుచుండగా వారి యొక్క వాహనము కనిమెట్ట గ్రామ శివారులో K.M.No.8439వద్ద యెదురుగా వచ్చుచున్న లారి నెం.KA 06 8439గలది వేగముగా వచ్చి డి కొనగ సదరు కారు యొక్క ముందు భాగము లారి యొక్క ముందు చక్రముల క్రింద ఇరుకుకొని పోయి కారులో ప్రయానించుచున్న ముతురాుకి బలమైన గాయములు తగిలి చనిపోయినట్లు పంచుల అభిప్రాయము తెలియచెసినారు”.

15. From the above it is clear that various versions are put forth in the inquest report, but importance can be given to the contents in Column No.15 of the inquest panchanama, since the same is

the gist of what the witnesses have stated during their examination at the time of inquest. Further, the contents of the charge sheet would show that on 07.12.2002, in the early hours, D1 and D2 left their house at Banjara Hills, Hyderabad in their own car, being driven by D3 and were proceeding to Tirupathi to attend marriage function and at about 12.00 hours when they were proceeding within the limits of Kanimetta village on National Highway No.7, near kilometer stone No.125/7, the accident in question took place. The car driver tried to overtake the vehicle which was proceeding in front. It is stated that the driver of the lorry bearing No.KA 06 8439 which was coming in opposite direction, drove the vehicle in rash and negligent manner with high speed, lost control over the vehicle and rammed into the car.

16. It is thus clear that the accident took place due to rash and negligent driving by the lorry driver. Therefore, the conclusion reached by the investigating officer that the car was overtaking the vehicle and at that time, the lorry came from opposite direction and dashed the car, is not sufficient to infer that the driver of the car was responsible for the accident or that he was driving in a rash and negligent manner. Every overtaking made on a highway does not lead to an inference that the driver overtaking the car would be driving the vehicle in a rash and negligent manner. In fact it has come on record through the averments in the charge sheet that the driver of the lorry drove

the vehicle in a high speed, lost control over the vehicle and dashed against the car.

17. Apart from that, it is also to be noted that merely because the accident took place due to rash and negligent driving by itself is not sufficient to draw a presumption that the driver of the car is also attributable to the accident. Contributory negligence as pleaded by the counsel is to be proved by showing evidence. In the absence of any rebuttal evidence being placed by the second respondent and in view of the evidence of PW2 coupled with the averments in column No.15 and contents of the charge sheet, it can be concluded that the accident took place due to rash and negligent driving of the driver of the lorry bearing No.KA06 8439.

18. Coming to the quantum of compensation awarded, the learned counsel for the appellant mainly contends that the multiplier which was adopted while calculating loss of earnings is on higher side. According to him in OP.No.3059 of 2003, suitable multiplier which has to be adopted should be '15' and in O.P.No.3058 of 2003, the multiplier should be '14'. But, however, learned counsel states that in view of recent judgment of the Supreme Court, where compensation can be adjusted on other counts, without enhancing the quantum of compensation already awarded in an appeal filed by the insurance company, he did not press for the same.

19. Having regard to the above, we feel that there are no grounds to entertain the appeals and the same are accordingly dismissed. No costs.

20. Miscellaneous petitions pending in these appeals, if any shall stand closed.

C. PRAVEEN KUMAR, J

T.RAJANI, J

26.07.2018
vhb

