

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.617 OF 2009

JUDGMENT:

This appeal is filed by the appellants/respondents 1 & 2 aggrieved by the Order and Decree dated 28.11.2003 passed in O.P.No.182 of 2003 by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Karimnagar (for short, the Tribunal).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The brief facts of the case are that on 25.07.2002 the deceased-Vangala Janardhan Reddy went to Peddapally on his personal work. After completion of his work, he boarded an auto bearing No.AP-15-V-7742 along with other passengers at Peddapally to go to Gurrampally. While so, at about 3.30 p.m., when the auto reached near Ooracheruvu Katta of Maredugonda Village, the driver, the 2nd respondent, drove the lorry bearing No.AP-9-T-7777 in a rash and negligent manner with high speed and hit the auto in opposite direction. As a result, the deceased and two others died on the spot with multiple injuries and others received simple and grievous injuries. On a complaint, Police, Peddapally Police Station, registered a case in Crime No.151 of 2002. Thus, the accident occurred due to the rash and negligent driving of both the drivers of auto and lorry. By the date of the accident, the deceased was aged 30 years and he

is an agriculturist having Ac. 7.00 of wet land and he also produce the milk. Thus, he was earning in all an amount of Rs.6,000/- per month. The 1st petitioner is the wife, petitioners 2 & 3 are the minor children and the 4th petitioner is the mother of the deceased. The respondents 1 & 2 are the owner & driver of the lorry bearing No.AP-9T-7777 and the respondents 3 & 4 are the owner and insurer of the auto bearing No.AP-15-V-7742. Hence, the petitioners/claimants filed the present claim petition claiming a compensation of Rs.8,00,000/-, payable by respondents 1 to 4, who are jointly and severally liable to pay the compensation.

4. Before the Tribunal, respondents 1 & 2 filed their counter denying the averments of the claim petition and contended that on 25.07.2002 at about 3.00 p.m., the 2nd respondent/driver of the lorry was transporting paddy load from Kunaram Village to Peddapalli. When he reached near Ooracheruvu Katta, situated at the outskirts of Maredgona Village, the 2nd respondent stopped his lorry towards complete left side of the road to answer calls of nature, at that time once auto rickshaw bearing No.AP-15-V-7742 came in opposite direction in a rash and negligent manner with high speed, being driven by one Reddy Sadaiah and the said auto went out of his control and hit the right side rear wheel of parked lorry and turned turtle. As a result, the driver of the auto and other passengers have received fatal, grievous and simple injuries and there is no negligence on the part of the 2nd respondent/lorry driver. It is further

contended that the photographs of scene of offence and panchanama and sketch map clearly show the negligence and rashness of auto driver, who died in the accident later on. The Police, Peddapalli Police Station, registered the case against both the drivers in Crime No.151 of 2002 alleging that the driver of auto rickshaw and the driver of the lorry, both are equally responsible for the accident, but there is no negligence on the part of the 2nd respondent/lorry driver and the alleged accident occurred only due to the rash and negligent driving of auto rickshaw by its driver. It is further contended that the amount claimed is excessive and respondents 1 & 2 are not liable to pay any compensation and prayed to dismiss the claim petition.

5. The 3rd respondent remained *ex parte*.

6. The 4th respondent filed its counter denying the averments of the claim petition and contended that the accident did not take place due to the rash and negligent driving of the 3rd respondent and only due to the rash and negligent driving of the 2nd respondent/lorry driver, the accident took place. It is further contended that at the time of accident, more than 7 persons were traveling in the auto in violation of policy terms and only three passengers and one driver are permitted to travel in the auto and hence, the 3rd respondent violated the terms and conditions of the policy. It is further contended that the amount claimed is excessive and respondents 1 & 2 are not liable to pay any compensation and prayed to dismiss the claim petition.

7. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that on the principle of composite negligence, the accident occurred due to the rash and negligent driving of both the drivers of the lorry and auto and awarded total compensation of Rs.2,97,500/-, with interest @ 9% per annum from the date of petition till the date of realization i.e., Rs.2,88,000/- towards loss of income, Rs.2,000/- towards funeral expenses, Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate and regarding fixing of liability, the Tribunal made both the 1st respondent as well as the 4th respondent liable to pay the said amount equally at the ratio of @ 50% : 50% and directed the 1st respondent and the 4th respondent to deposit the amount with 50% each within one month from the date of the order. Aggrieved by the said order, the appellants/respondents 1 & 2/owner and driver of the lorry filed the present appeal praying to allow the appeal by setting aside the order passed by the Tribunal and exonerating their liability.

8. Heard Sri Ramachandar Rao Vemuganti, learned counsel appearing for the appellants/respondents 1 & 2, Sri N.Parameswara Reddy, learned standing counsel for the 2nd respondent/4th respondent/insurance company and Sri S.Mohd. Abdul Kareem Khan, learned counsel appearing for respondents 3 to 6/claimants. Perused the material available on record.

9. Learned counsel for the appellants submits that for no fault of the lorry driver, the appellants/respondents 1 & 2, who

are owner and driver of the lorry bearing No.AP-9-T-7777, cannot be penalized and the apportionment of 50% liability on them is unjust and prayed to allow the appeal by setting aside the order passed by the Tribunal by exonerating their liability.

10. In the light of Exs.A-1 & A-2, the Tribunal came to the conclusion that there was collusion between lorry bearing No.AP-9-T-7777 and an auto bearing No.AP-15-V-7742, wherein the auto rickshaw is totally damaged leading to grievous injuries and also death of the inmates of the auto rickshaw. A fair perusal of Ex.B-2 – certified copy of scene of offence Panchanama with sketch map goes to show that the lorry, loaded with paddy bags, was going upwards the road and the auto rickshaw with the passengers was coming downwards the road, wherein it appears that the auto driver has lost his control and applied breaks, but was of no avail and there was collusion between the lorry and auto, as a result, the auto dashed the rear wheel of the lorry on its right side and the accident had taken place, as a result of which, the auto got damaged and some of the inmates of the auto died and some injured. From the above, it can be reasonably presumed that the lorry was traveling towards upwards of the road and there is a curve on the road. It is not possible for a heavy goods vehicle carrying goods to drive in a zig-zag manner and it cannot drive in a rash and negligent manner also. On the fair perusal of Ex.B-2-scene of offence Panchanama with sketch map & Ex.A-2-charge sheet, which is also marked as Ex.B-1 by the respondents, there is

inconsistency in the contents of the charge sheet. To put it more clear, the contents of the charge sheet has not categorically explained the manner in which the accident has taken place and holding the drivers of both the vehicles liable for the accident.

11. Perusal of the evidence of R.W.1-driver of the lorry goes to show that when he reached Ooracheruvukatta of Maredugon Village, he parked the lorry on the complete left side of the road to answer the calls of nature; at that time, the auto in question was coming in the opposite direction in a rash and negligent manner with high speed and dashed against the rear wheel of the lorry on its right side; as a result, the auto over turned; 10 to 12 passengers were traveling in the auto; the accident took place due to the rash and negligent driving of the auto driver.

12. By placing reliance on Ex.B-2-scene of offence Panchanama with sketch map, this Court has no hesitation to hold that the accident has occurred due to the rash and negligent driving of the driver of the auto and since the auto is insured with the 4th respondent and same is covered under the valid policy, the liability needs to be fastened on the insurer but not on the owner and driver of the lorry.

13. The respondents 3 to 6/claimants have neither preferred any cross-objections nor filed any cross appeal seeking any enhancement of the compensation awarded by the Tribunal.

14. Sri S.Mohd. Abdul Kareem Khan, learned counsel appearing for respondents 3 to 6/claimants, placed reliance on a decision reported in **Surendra Singh and another v. Vijay Singh and another**¹, wherein it was held that claim proceedings being not truly adversarial and enhancement proposed being correction of award on the basis of correct multiplier or formula being applied in accordance with law laid down by Apex Court it may not be resisted because cross-appeal has not been filed and prayed to enhance the compensation awarded by the Tribunal.

15. With regard to the issue of fixing of just and fair compensation is concerned, the facts of the present case on hand and the facts in **Surendra Singh's case** (supra) are different and it is not proper to appreciate the principal of fixing the just and fair compensation in the appeal filed by the owner of the offending vehicle. Therefore, the contention of the learned counsel for respondents 3 to 6/claimants with regard to fixing of compensation is rejected.

16. With regard the issue of fixing of the liability is concerned, having regard to the facts and circumstances of the case and with the above observations, this Court holds that the appellants/respondents 1 & 2, owner and driver of the lorry bearing No.AP-9T-7777, are exonerated from the liability and the entire liability is fastened on the 2nd respondent/4th respondent/insurance company. Except the above said

¹ 2019 ACJ 329

modification, rest of the award passed by the Tribunal remains un-changed.

17. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed setting aside the order and decree dated 28.11.2003 in O.P.No.182 of 2003 passed by the Tribunal and appellants/respondents 1 & 2, owner and driver of the lorry bearing No.AP-9T-7777, are exonerated from the liability and the entire liability is fastened on the 2nd respondent/4th respondent/insurance company. The 2nd respondent/insurance company is directed to deposit the compensation amount of Rs.2,97,500/- awarded by the Tribunal along with proportionate costs and interest @ 9% per annum from the date of petition till the date of realisation. On such deposit, the respondents 3 to 6/claimants are permitted to withdraw their respective shares as awarded by the Tribunal. It is needless to observe that the appellants/respondents 1 & 2 are entitled for refund of the amounts deposited by them in pursuance of the interim orders passed by this Court in MACMAMP.No.6098 of 2005, dated 20.12.2005. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 23rd September, 2019

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