

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No. 1384 OF 2006

JUDGMENT:

This appeal is preferred by the appellant/Insurance Company questioning the Award of the IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, Hyderabad (for short, the trial Court) in O.P.No.1288 of 2003, dated 27.03.2006.

2. For the sake of convenience, the parties herein are referred to as they are arrayed in O.P.No.1288 of 2003.

3. The brief facts of the case are that on 01.04.2001, while Narasimhulu (hereinafter, he is called as the deceased) was going from his residence at Regadi Ghanapur on his scooter bearing No.AP11H 5583 towards Hyderabad, and when he reached Moinabad Village outskirts at about 10.50 pm., he dashed a tractor and trolley bearing No.AP28G 295 and 296, which was parked on the road. In the said accident, the deceased fell down, sustained grievous injuries and died on the spot. Claimant Nos.1 to 6, who are wife, children, father and mother of the deceased, filed aforesaid OP against respondent Nos.1 to 3 therein i.e., insurer of the scooter, owner and insurer of the tractor and trolley respectively, claiming compensation of Rs.5,00,000/- for the death of the deceased.

4. Before the Tribunal, owner of the tractor, remained *ex parte*. Insurer of the scooter filed counter denying the allegations in the claim petition and contended that as the scooter covered by an Act policy, it is not liable to pay compensation for the death of the

deceased and sought to dismiss the claim petition. Insurer of the tractor filed counter denying the allegations in the claim petition and contended that as the accident occurred due to the rash and negligent driving of the deceased himself, it is not liable to pay any compensation and sought to dismiss the claim petition.

5. After considering the oral and documentary evidence on record, the Tribunal framed the following issues:

- (i) “Whether the accident caused death to the deceased that took place due to rash and negligent driving of the respondent No.1’s vehicle?
- (ii) Whether the petitioners are entitled for compensation? If so, to what amount and from whom?
- (iii) To what relief?

6. The Tribunal dealt with issue Nos.1 to 3 together. It held that there is 50% contributory negligence on the part of the deceased in causing the accident; that as the scooter was covered by Act policy, the insurer of the scooter is not liable to pay the compensation; and that the insurer of the tractor is liable to pay 50% of the compensation amount i.e., Rs.2,81,100/-. The insurer of the tractor, challenging the liability fastened on it, filed the present appeal.

7. Sri E.Venugopal Reddy, learned counsel for the appellant-insurer of the tractor, submits that having held that the accident occurred due to the rash and negligent driving of the deceased, basing on the contents of Ex.A.1 and the evidence of P.W.2 and R.W.1, the Tribunal ought to have exonerated the liability of the appellant. He further submits that though there was

no evidence to the effect that the tractor was parked on the road without proper indications, the Tribunal on assumptions and presumptions came to the conclusion that the driver of the tractor parked the vehicle without any indication and seeks to set aside the Award of the Tribunal to the extent of fastening the liability on the appellant.

8. Sri T.Viswarupa Chary, learned counsel for the claimants-respondent Nos.1 to 6 herein, and Sri G.Vasanth Rayudu, learned counsel for insurer of the scooter-respondent No.7 herein, submit that the Tribunal, basing on the evidence of R.W.1, came to the conclusion that the driver of the tractor parked the vehicle without any indications and accordingly apportioned the liability on the appellant to the extent of 50% of the compensation. They further submit that the Tribunal passed a well reasoned order and there are no grounds to interfere with the same and sought to dismiss the appeal.

9. The present appeal is filed mainly on the ground that the deceased himself dashed the stationed tractor, which was parked left side of the road with indications, with his rash and negligent driving and hence, it is not liable to pay compensation. A perusal of the Award of the Tribunal, it appears that the Tribunal relied upon the evidence of P.Ws.1 and 2 in deciding the issue as to who is responsible for the accident. The relevant paras read thus:

“ P.W.2 claims to have witnessed this accident while going to Chevella. He has seen a Scooterist going from Chevella and proceeding towards Hyderabad came in contact with the stationed tractor with trailer. As seen from the evidence of P.W.2, the Tractor was parked on the left side of the road. It is dark and there were no street lights, in such a

case the scooter would be having head lights and with the help of the head lights the object in front of scooter could be seen from atleast a reasonable distance and so the scooter could have been stopped had the brakes been applied. Nobody has stated that the Tractor had no parking lights. It is further seen from the evidence of P.W.1 that the light of the scooter was very powerful and it was a single road and a straight road and there was no traffic at that time. The scooter pierced into back portion of the tractor. This shows that the driver of the scooter was negligent. It is also seen from the evidence of P.W.2 that on seeing the scooterist from a distance of 20 ft., he thought that the scooterist may dash against the stationed tractor and trailer and it occurred. The possibility of witnessing this incident also appears to be remote because P.W.2 himself states that ten minutes after the accident, he reached the spot and by that time the scooterist dead. This gentleman has not given report to the police though he claimed to have been at the spot of the accident for more than one hour. He claims to have given his name and address to the relatives and the petitioner. But he does not say that he was examined by the police. Therefore, it is very difficult to accept the evidence of this witness.

From the contents of Ex.A.1 and the evidence of P.W.2 and R.W.1, I hold that the accident occurred due to rash and negligent driving of the scooter by the deceased. But then there is also negligence on the part of the driver of the Tractor for having parked the vehicle though on the left side of the road without any indications. The owner of the tractor is a party to these proceedings. He can as well examine the driver of the tractor to state that he has taken all the precautions required under M.V. Act Rules while parking the tractor. Therefore, I hold that there has been contributory negligence on the part of the tractor driver also. Under the circumstances, both the driver of the scooter and driver of the tractor are responsible for this incident."

10. From the above, it is clear that the Tribunal, though came to the opinion that the accident occurred due to rash and negligent driving of the deceased, for the negligent parking of the tractor by its driver, it held that there is contributory negligence on the part of the driver of the tractor in occurring the accident. Having regard to the facts and circumstances of this case, I am of the opinion that the Tribunal has passed a well reasoned order and there are no grounds to interfere with the same. Consequently, the appeal is liable to be dismissed.

11. Accordingly, the Motor Accident Civil Miscellaneous Appeal is dismissed. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

T.AMARNATH GOUD, J

Date: 04-11-2019
TJMR

