

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 329 of 2006

Judgment:

Challenging the order, dated 07.11.2005, in MVOP No.201 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Khammam (for short 'the Tribunal'), whereby and whereunder the claim petition of the petitioners for a sum of Rs.4,00,000/-, laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), was dismissed, the petitioners – claimants preferred the instant appeal.

2. For convenience sake, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that on the intervening night of 14/15.06.2001 at about 12.00 hours, while one Balaboina Pullaiah, belonging to Thallagudem village, Kamepally Mandal, Khammam District, was returning home, having attended to nature calls, and reached near check-post on R & B road, the first respondent, who was driving the lorry bearing registration No.AHK-9504 coming from Yellandu and proceeding towards Khammam, driven it in a rash and negligent manner at high speed and dashed him, resulting grievous injuries to him. He was immediately shifted to Government Hospital, Khammam, for treatment, where he succumbed to injuries. On a report, the Station House Officer, Kamepally, registered a case in Crime No.43 of 2001 under Section 304-A IPC against the first respondent. The petitioners, who are the legal heirs of the deceased,

being wife, minor children and mother respectively, being dependents on his earnings, laid the instant claim. According to them, the deceased was owning Ac.5-00 of land earning Rs.1,00,000/- per annum from agriculture, besides earning Rs.100/- per day by selling toddy and contributing almost his earnings for the sustenance of the family and he would have lived for another 33 years had he been alive and, therefore, sought Rs.4,00,000/- as compensation from the respondents 1 to 3, who are the driver, owner and insurer of the lorry respectively.

4. The second respondent – owner of the lorry remained *ex parte*. The first and third respondents filed separate counters. The first respondent admitted that he was the driver of the lorry and possessing valid driving licence. He was under the employment of the second respondent – owner of the vehicle, which was insured with the third respondent – insurance company. Since he was only a driver, he is not liable to pay compensation to the claim petitioners and, if any compensation is awarded, the third respondent – insurance company is liable to pay the same and, therefore, sought to dismiss the petition against him.

5. The third respondent – insurance company opposed the claim raising various pleas. It has taken a specific plea stating that policy does not cover the risk of the vehicle and, thereby, it is not liable to pay any compensation to the petitioners and also expressed unawareness as to the criminal proceedings initiated by the police in the said accident and that the second respondent being owner not intimated the taking place of the accident in collusion with the claim petitioners, despite a duty was cast upon him and, therefore, sought to dismiss the claim petition. The third respondent also obtained permission under

Section 170 of the Act from the Tribunal to put forth the defences as are available to the owner of the vehicle.

6. Basing on the said pleadings, the Tribunal framed the following three issues about the responsibility for the accident:

“1. Whether the accident took place due to rash and negligent driving of the driver of lorry bearing No.AHK-9504/R.1?

2. Whether the petitioners are entitled to any compensation? If so, to what amount and from which of the respondents?

3. To what relief?”

7. During enquiry, the first petitioner, besides examining herself as PW.1, has examined one Chandra Venkateswarlu as PW.2 and marked Exs.A1 to A4. On behalf of the third respondent, one Ch. Kantha Rao was examined as RW.1 and marked copy of insurance policy as Ex.B1.

8. The Tribunal, on issue No.1, disbelieving the evidence of PW.2, based on probabilities that PW.2 despite asserting that he witnessed the accident, he did not report the same to the police and also observing that the answers given by PW.2 in his cross-examination would show that the person who was in drunken state fell on the road and PW.2 did not state that the lorry driver dashed that person and, thereby, held issue No.1 against the petitioners observing that the petitioners failed to establish that the first respondent drove the vehicle in a rash and negligent manner and caused the accident and, as such, the responsibility cannot be fixed on respondents 1 to 3 as claimed by the petitioners and, therefore, the petitioners are not entitled for any compensation from the respondents 1 to 3.

9. On issue No.2, the Tribunal, placing reliance on a decision of the Hon'ble Apex Court in **Tamil Nadu State Transport Corporation Ltd., v. S. Rajapriya**^[1], taken the multiplier '14' and the notional income of Rs.15,000/- as annual earnings, in the absence of any proof to show that the deceased was earning Rs.1,00,000/- per annum and Rs.100/- per day by selling toddy, and deducting 1/3rd towards personal expenses, taken the remainder of Rs.10,000/- per annum as contribution to the family and, thus, arrived at Rs.1,40,000/- towards loss of dependency, besides awarding Rs.15,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses, thus, making a total sum of Rs.1,57,000/-, but, however, dismissed the claim petition, in view of the findings tendered on issue No.1, adverted to herein before.

10. Aggrieved by the aforesaid order, the instant appeal is preferred by the petitioners contending in the grounds of appeal that the Tribunal has not properly appreciated the evidence on record and, despite the fact that Ex.A4 - Post-mortem examination report does not speak about anything as to the drunken condition of the deceased, still, the Tribunal went on to record a finding that he was in drunken state. It is also stated that the evidence of PW.2 and the counter of the first respondent would clearly show that the accident in question had occurred due to the rash and negligent driving of the lorry in question, which was insured with the third respondent. It is also stated that the Tribunal did not properly appreciate the evidence as regards annual income of the deceased and, therefore, sought to grant Rs.4,00,000/- by setting aside the order and decree passed by the Tribunal.

11. Heard Sri M. Rajamalla Reddy, learned counsel for the

appellants, and Sri Katta Lakshmi Prasad, learned counsel for the third respondent – Insurance Company. Though, notice was served on the second respondent – owner of the vehicle, none appears for him. The first respondent was not served, however, his defence was clear that he sought to exonerate him from the liability, since the vehicle was insured with the third respondent – insurance company.

12. Learned counsel for the appellants submits that the Tribunal went wrong in holding that the petitioners failed to prove rash and negligent driving of the driver of the lorry and basing on surmises and assumptions, despite the clear evidence of PW.2, who figured as one of the prosecution witnesses as per the charge sheet marked as Ex.A2, dismissed the claim. Further submission is, that the Tribunal did not properly interpret the evidence of PW.2 in his cross-examination and went wrong in stating that the lorry did not dash the person referred to by PW.2 on the mere ground that PW.2 did not report it to the police and had he been really travelling in the said lorry at the relevant time he would not have failed to lodge a complaint and, thereby, arrived at a wrong conclusion by recording a wrong finding. Learned counsel also placed reliance on a decision of this Court in **K. Rajani v. M. Satyanarayana Goud**^[2], contending that in an alike situation occurring herein, this Court has set aside the dismissal order passed by the Tribunal and awarded compensation.

13. Perused the order and, oral and documentary evidence, let in by the petitioners and the third respondent.

14. In deciding the finding recorded by the Tribunal on issue No.1, the evidence of PW.1 is not relevant, but the evidence of PW.2 becomes relevant. Since the name of PW.2 is finding place as LW.10

in Ex.A2 – charge sheet, describing him as an eye witness to the incident, certainly, the evidence of PW.2 cannot be discarded, but requires a thorough scanning as to whether he was speaking truth or otherwise.

15. Adverting to the evidence of PW.2, in his chief-examination he specifically asserts that the driver of the lorry, in which he was travelling, had dashed the said person, who came on to the road, and the said person fell down, but the driver of the lorry did not stop the lorry and proceeded towards Khammam and, later he came to know that the person, who was dashed by the lorry on 14.06.2001, was one Balaboina Pullaiah of Thallagudem village and he was examined by the Police, Kamepalli, and he narrated the same facts before the police and that the death of the deceased was caused due to hit by a lorry bearing registration No.AHK 9504 and that he had witnessed the same. In his cross-examination, to the question put by the learned counsel for the third respondent – insurance company, answering that it was a fact that lorry came up and the person fell on the ground in a drunken state but he told the driver that he fell under the lorry and asked the driver to stop the lorry and the driver of the lorry failed to hear his words and took the lorry without stopping there. He also answers that the driver when enquired the cleaner as to what had happened to that person, the cleaner verified and told the driver that the person fell on the ground was in drunken state. He denies the suggestions that he was deposing falsely to help the petitioners and that the deceased fell on the ground by heavily drunk and that the first respondent never drove the lorry rashly and negligently and that he was deposing falsehood. He reiterates to a question that he was an eye witness to the incident and denies that he was not an eye witness

to the accident. This portion of his cross-examination was interpreted by the Tribunal and arrived at the finding observing that PW.2 has categorically admitted that the person fell on the ground was in a drunken state and the lorry came up and he along with others told the driver that the person fell under the lorry and asked the driver to stop the lorry, but the driver of the lorry failed to hear the words and took the lorry without stopping there. The Tribunal discussed the evidence of this witness in the light of the contents of Ex.A1 - FIR. In paragraph '10', touching the FIR contents, the Tribunal observed that it was the duty of PW.2, who saw the accident as stated by him in his chief examination, to report the same to the police, but he failed to do so. Concerning Ex.A2 – charge sheet, the Tribunal observed that Ex.A2, filed against the driver, is not established. That observation does not find support from any material on record, but strangely, the said observation was made by the Tribunal. The Tribunal also made an observation that the evidence of PW.2 is not to the effect that the lorry driver dashed the person, but it shows that the person already fell on the road in a drunken state and, thereby, it disbelieved the evidence of PW.2 and believed the version of RW.1, who is an Assistant Administrative Officer from the Branch Office of the third respondent – Insurance Company.

16. In the present context, it would be profitable to extract the observations of this Court in **Rajani's** case (2 supra) contained in paragraph Nos.11, 15, 16 and 19, thus:

“11. It is not in dispute that one N.Sridhar Rao lodged the complaint with the police, Gajwel and a case in Crime No.104 of 2001 was registered under Section 304(a) IPC. The contents of the FIR go to show that an unknown vehicle has dashed against the scooter from its behind and the deceased died on the spot. Ex.A.1 is the copy of the FIR. Ex.A.2 is the copy of the charge-sheet. Ex.A.3 is the inquest report. Ex.A.4

is the copy of the post-mortem report. The contents of Ex.A.2 go to show that the police, having received the information about the accident, went to the place of accident and conducted panchanama of the place of accident and seized one driving licence of the accused G.Narsing Rao, S/o. Babulal. The contents of the charge-sheet also go to show that one Karre Venkataswamy and Komeri Vinod were shown as eyewitnesses in the charge sheet. The charge-sheet bears the date as 28.02.2002, but it was filed before the Court on 16.05.2002. It is also necessary to mention that the claim petition was filed before the Tribunal on 17.10.2001 itself and the second respondent filed counter on 23.07.2002.

15. The learned counsel for the claimants had relied on the judgment of the Apex Court in the case between **Parameshwari Vs. Amir Chand and others (2011 (2) SCJ 796 = 2011 ACJ 1613)**. In that case, the evidence of the eyewitness was initially disbelieved on the ground that he did not lodge any police complaint. In the circumstances, the Apex court observed that merely because the eyewitness has not lodged any police complaint, his evidence cannot be disbelieved.

16. Learned counsel for the claimants had also relied on the judgment of the Apex Court in the case between **Bimla Devi and others Vs. Himachal Road Transport Corporation and others (2009(2) An.W.R.492(SC) = 2009(6) SCJ 368 = (2009) 13 SCC 530)**. In the said case, the Apex Court observed as follows:-

“It was not necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.”

19. Admittedly, in this case, the claimants have filed the claim petition on 17.10.2001. The Insurance Company filed counter thereafter. This means, the Insurance Company had knowledge that an allegation is made by the claimant with regard to the involvement of the lorry bearing registration No.ABT 3 in this accident. When the Insurance Company had

knowledge that the claimants have alleged involvement of the lorry bearing registration No.ABT 3 in the accident, the Insurance Company should verify the facts. The possibility of falsely involving the vehicle in an accident cannot be ruled out. But as seen from the recitals of the counter, the Insurance Company had not taken any specific stand. At one stage, it doubted the involvement of the offending vehicle in the accident and at another stage, the insurance company had pleaded that the deceased himself had contributed to the accident. Thus, the insurance company had no clear view with regard to the involvement of the offending vehicle in the accident. When the Insurance Company entertains a doubt with regard to the involvement of a vehicle in the accident, it should appoint an investigator to enquire into the allegations as to whether a particular vehicle had plied on the particular route at particular time on a particular day or not. Fact should be verified. If the Insurance Company collects any such evidence to establish that the vehicle was not involved in the accident, then, they must contest the matter and adduce evidence in support of their case. When they come to know that the police investigation is false or that a vehicle is falsely implicated in a case, they must approach the superior police officers and see that necessary action is taken against the erring police officers who have filed a false charge-sheet implicating the vehicle which has no involvement in the accident. They must also challenge the charge-sheet in appropriate proceedings. What happened during the course of investigation and how the police have come to know about the involvement of the vehicle and whether it is due to finding of the driving licence of the driver of the offending vehicle at the place of accident or due to the version of the eye witnesses, all those aspects cannot be gone into at this stage. The possibility of police coming to know about the involvement of a vehicle or an accused through some unknown source also cannot be ruled out. The police officers do commit certain mistakes and involve innocent persons in criminal cases. Due to over enthusiastic attitude also, they commit mistakes. What is the fact is to be ascertained. It has to be seen whether police investigation resulted in finding the truth or not. If at all the findings of the police are found to be totally incorrect, it is for the insurance company to adduce some evidence to show that the contents of the charge-sheet are

false. It is a fact that P.W.2 deposed that the offending vehicle was not stopped at the place of accident. If that version is correct, there is no possibility of falling of driving licence at the place of accident. Admittedly, the accident occurred during the night time. Even if P.W.2 had witnessed the accident and noted the offending vehicle number, admittedly he did not get down from the lorry in which he was travelling. It appears that it being night time, he could not have observed the place of accident and he might not have observed each and every object fallen at the place of accident. It is only during the course of preparation of panchanama at the place of accident that the panchas and the police are expected to observe each and every item and note them in their panchanama. The very purpose of conducting panchanama and the scene of offence is to show the location of the dead body, location of offending vehicle, time, marks or falling of any other objects at the place of accident."

17. In the light of the above observations, when the evidence of RW.1 is examined, his version is nothing but in tune with the version of Ex.A1 - FIR that the number of the lorry was not mentioned in Ex.A1 – FIR. He asserts in his chief examination that since the number of the lorry, which is shown in the instant claim petition, was not mentioned in Ex.A1 – FIR, according to him, it is clear that as an after thought the claim petitioners colluded with the respondents 1 and 2 and foisted a false case to get compensation from the insurance company illegally. Though, he speaks about the contents of FIR as well as charge sheet and asserts that his company is not liable to pay compensation, his evidence is absolutely silent as to whether the third respondent - insurance company has got conducted any investigation through its investigating agency, though, the insurance company has got investigators appointed for the said purpose. In fact, the third respondent was duty bound to examine the concerned investigator and even obligated with the duty to file investigator's report and exhibit

it in regard to which the evidence of RW.1 is entirely silent. This circumstance alone is sufficient enough to draw an inference adverse to the stand taken by the third respondent. When the charge sheet is an outcome of the investigation done by the investigating agency in accordance with the statutory procedures, certainly, the contents of the charge sheet cannot be brushed aside lightly, unless there are such strong circumstances to give rise to suspicion as to the entire narration of the case put forth in the charge sheet, in which direction there is absolutely nothing from the side of the third respondent. The very conduct of RW.1 in maintaining silence as to whether investigation was done by the insurance company and what was the result of the said investigation as to the taking place of the accident and failure to exhibit the investigator's report are all circumstances to reject the evidence of RW.1, though, he is an Assistant Administrative Officer. Therefore, the Tribunal went wrong in excluding the evidence of PW.2, more particularly, when the post-mortem examination report does not disclose that the deceased was in a drunken condition, as no substance of consuming alcohol was found and noted in Ex.A4 – post-mortem examination report.

18. Touching the delay in reporting the complaint, the delay of a few hours cannot be construed as inordinate delay, that too in a case of this nature, where the offence is punishable under Section 304-A IPC, but not other offence, which involves *mens rea*, to give rise to any suspicion that the complaint was lodged after due deliberations and consultations.

A perusal of Ex.A1 – copy of FIR would show that the accident had occurred in the mid night at 12 0' clock on the intervening night of 14/15.06.2001. The complaint was lodged at 9.30 AM on 15.06.2001

in the Police Station, Kamepally. It is no doubt true, it is mentioned in Ex.A1 that an unknown vehicle dashed him when he was returning home and when he reached check-post road, the vehicle which was coming from Yellandu and proceeding towards Khammam dashed him. If the FIR was lodged with inordinate delay that too mentioning the number of the vehicle, the suspicion which the Tribunal entertained would have been justified, which is not so in the instant case. Therefore, the finding recorded by the Tribunal that, the driver of the lorry was not driving the vehicle in a rash and negligent manner and that the petitioners failed to prove the rash and negligent driving on the part of the driver of the lorry, is liable to be set aside and, accordingly, set aside as it is not based on proper appreciation of the evidence on record.

19. Now turning to the determination of compensation, the Tribunal has taken the age of the deceased as 30 years, but applied multiplier '14', placing reliance on the decision in **S. Rajapriya's** case (1 supra), by taking the notional income at Rs.15,000/- per annum. Even accepting the notional income at Rs.15,000/- per annum fixed by the Tribunal, since the petitioners dependents are numbering '4', deduction of $\frac{1}{4}$ th of his earnings is permissible towards his personal expenses as per the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation** ^[3], thus, it works out to Rs.3750/- towards his personal expenses and the remainder at Rs.11,250/- per annum towards contribution. The relevant multiplier provided in the table, formulated by the Hon'ble Apex Court in **Sarla Verma's** case (3 supra), is '17' and, when the same is applied, the loss of dependency works out to Rs.1,91,250/-. The Tribunal has determined Rs.15,000/- towards loss of consortium and Rs.2,000/-

towards funeral expenses, but the petitioners are entitled to Rs.50,000/- as conventional sum as per the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar v. National Insurance Company Limited**^[4]. Thus, the petitioners are totally entitled to a sum of Rs.2,41,250/- with interest at 7.5% p.a., from the date of petition till realisation as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[5].

20. Accordingly, the appeal is allowed in part setting aside the order and decree passed by the Tribunal awarding Rs.2,41,250/- as compensation with interest as mentioned above. There shall be no order as to costs.

21. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 17.04.2015

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^[1] 2005(6) SCC 236

^[2] 2014(6) ALT 331

^[3] (2009) 6 SCC 121

^[4] 2014 ACJ 1430

^[5] 2013 ACJ 1403 = 2013(4) ALT 35