

***THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

+ M.A.C.M.A.Nos.2720 OF 2011 & 1185 OF 2012

% 10—07—2019

MACMA.No.2720 of 2011:

Bajaj Allianz General Insurance Company
Limited, rep. by its Divisional Manager

...Appellant

vs.

\$ N.Sandeep and Others

... Respondents

!Counsel for the Appellant: Sri T.Mahender Rao

^Counsel for Respondent Nos.1 to 5: None appeared

^Counsel for Respondent No.6: Smt.P.Satya Manjula

MACMA.No.1185 of 2012:

The New India Assurance Company
Limited, rep. by its Deputy Manager

...Appellant

vs.

\$ N.Narahari and Others

... Respondents

!Counsel for the Appellant: Sri Sriman

^Counsel for Respondent Nos.1 to 3: V.Atchuta Ram

^Counsel for Respondent No.5: T.Mahender Rao

^Counsel for Respondent Nos.4, 6 & 7: None appeared

<Gist :

>Head Note :

? Cases referred

1. 2009 ACJ 2003

IN THE HIGH COURT FOR THE STATE OF TELANGANA,
HYDERABAD

* * * *

M.A.C.M.A.Nos.2720 OF 2011 & 1185 OF 2012

MACMA.No.2720 of 2011:

Bajaj Allianz General Insurance Company
Limited, rep. by its Divisional Manager

...Appellant

vs.

N.Sandeep and Others

... Respondents

MACMA.No.1185 of 2012:

The New India Assurance Company
Limited, rep. by its Deputy Manager

...Appellant

vs.

N.Narahari and Others

... Respondents

JUDGMENT PRONOUNCED ON: 10.07.2019

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

T.AMARNATH GOUD, J

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. Nos.2720 OF 2011 AND 1185 OF 2012

COMMON JUDGMENT:

The motor vehicle accident that occurred on 17.09.2005 at about 10:30 am., on the outskirts of Narkatpally village is the common subject matter in both these appeals and, therefore, they are analogously heard and taken up for disposal by this common judgment.

Brief facts of the case are as under:

On 17.09.2005, the injured N.Sandeep, along with Vinay Kumar, Rakesh Kumar and Srikanth, was proceeding in a Maruthi Car bearing No.AP-11K-4723 from Hyderabad towards Kodad, and the car was driven by Vinay Kumar. When the car reached the outskirts of Narkatpally village, the driver of a lorry bearing No.AP-24V-1856, which was proceeding in front of the Maruthi Car, applied brakes suddenly, without any indication, thereby the Maruthi Car dashed the lorry from behind. Due to the impact of accident, the driver of the Car Vinay Kumar, and M.Srikanth, died on the spot. Rakesh Kumar and N.Sandeep suffered severe injuries. Rakesh Kumar succumbed to the injuries while undergoing treatment in KMS Hospital in Narkatpally. N.Sandeep who suffered grievous injuries was also shifted to KMS Hospital and thereafter to Kamineni Hospital for better treatment.

A case was registered against Vinay Kumar, who was the driver of Maruthi Car, in Crime No.112 of 2005 of Narkatpally Police Station, however, the same was abated as the driver also died in the accident.

MACMA No.2720 of 2011

Alleging that the accident occurred due to the rash and negligent driving by the driver of Maruthi Car, the injured N.Sandeep filed O.P.No.2624 of 2005 before the Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, at Hyderabad, (for short, 'the Additional Chief Judge'), against respondent No.1-owner of Maruthi Car, and respondent No.2-insurer of Maruthi Car, seeking compensation of Rs.5,00,000/- under various heads. Respondents 3 and 4, who are legal heirs of respondent No.1, were added in I.A.No.2105 of 2006 dated 12.03.2007. Respondents 5 and 6, who are the owner and insurer, respectively, of lorry bearing No.AP-24U-1856, were added in I.A.No.3023 of 2008 dated 12.01.2009.

On behalf of the claimant-N.Sandeep, PWs.1 to 4 were examined and Exs.A1 to A20 were marked. On behalf of respondent No.2-insurer of Maruthi Car, RWs.1 and 2 were examined and Exs.B1 to B8 were marked.

The learned Additional Chief Judge, on appreciation of the oral and documentary evidence available on record, held that the accident occurred due to the rash and negligent driving by the

driver of Maruthi Car, and awarded a compensation of Rs.2,85,000/- with interest at 7.5% per annum from the date of petition till realization, holding respondents 2, 3 and 4 jointly and severally liable to pay the compensation. The claim against respondents 5 and 6 (i.e., owner and insurer of the lorry) was dismissed.

Aggrieved by the Award passed by the learned Additional Chief Judge, respondent No.2-Insurer of Maruthi Car filed MACMA No.2720 of 2011, primarily on the ground that there is a contributory negligence on the part of the driver of the lorry bearing No.AP-24U-1856, as the driver had applied the brakes suddenly and without any indication, thereby the driver of the Maruthi Car had no hint that the lorry going in front of his car is about to stop, due to which the driver of Maruthi Car couldn't control the vehicle and dashed against the lorry from behind.

Respondent No.2 also raised the ground that in similar circumstances in **Raj Rani v. Oriental Insurance Co.**¹, the Hon'ble Supreme Court held that the drivers of both the vehicles are equally negligent and therefore the learned Additional Chief Judge ought to have considered the said judgment in the present case. It is also contended that against the death of Rakesh Kumar, who also died in the very same accident, the learned Additional Chief Judge held that there is contributory negligence on the part

¹ 2009 ACJ 2003

of both the drivers and apportioned the liability at the rate of 50% each against the owners/insurers of respective vehicles, and therefore the learned Additional Chief Judge ought to have apportioned the liability as there is contributory negligence in this case.

MACMA No. 1185 of 2012

Likewise, the parents and sister of the deceased M.Srikanth, filed O.P.No.3184 of 2005 before the VII Additional Metropolitan Sessions Judge-cum-Motor Accidents Claims Tribunal, Hyderabad (for short, 'the Sessions Judge'), seeking compensation of 7,00,000/-, initially against the owner and insurer of the Maruthi Car, however, later the claim was made against respondents 4 and 5, who are the owner and insurer of lorry bearing No.AP-24U-1856, by way of filing I.A.No.3459 of 2006.

On behalf of the claimants PWs.1 and 2 were examined, and Exs.A1 to A8 were marked. On behalf of respondent No.2-insurer of Maruthi Car, RWs.1 and 2 were examined, and Exs.B1 to B8 were marked.

The learned Sessions Judge, on appreciation of the oral and documentary evidence available on record, held that the accident occurred due to composite negligence of the drivers of both the vehicles, i.e., Maruthi Car and Lorry, and therefore, awarded a compensation of Rs.4,83,000/- with interest at 6% per annum from the date of petition till realization, holding respondent Nos.2 to 5,

who are the insurer of Maruthi Car, owner of Maruthi Car, owner of Lorry and insurer of Lorry, respectively, jointly and severally liable to pay the compensation.

Aggrieved by the fixing of liability against respondent No.5-insurer of lorry, the insurer filed MACMA No.1185 of 2012, primarily contending that the learned Sessions Judge ought to have appreciated that the case was registered only against the driver of Maruthi Car, and not against the driver of lorry. It is also contended that the learned Sessions Judge erred in taking into consideration the income of the deceased at Rs.6,000/- per month though he is a student and there being no income proof.

It is not in dispute that in a road accident occurred on 17.09.2005 by involvement of aforesaid two vehicles, N.Sandeep sustained injuries and M.Srikanth died. The injured person filed O.P.No.2624 of 2005 and the legal representatives of the deceased filed O.P.No.3184 of 2005. O.P.No.2624 of 2005 was tried by the Additional Chief Judge, who held that the accident occurred due to the rash and negligent driving by the driver of Maruthi Car, and directed respondents 2 (insurer of Maruthi Car), 3 and 4 (legal representatives of Maruthi Car owner) jointly and severally liable to pay the compensation, while dismissing the claim against respondent Nos.5 and 6, owner and insurer of the lorry, respectively. O.P.No.3184 of 2005 was tried by the learned Sessions Judge, who held that the accident occurred due to

composite negligence of the drivers of both the vehicles, i.e., Maruthi Car and Lorry, and directed insurer of Maruthi Car, owner of Maruthi Car, owner of Lorry and insurer of Lorry, respectively, to pay the compensation jointly and severally.

It is to be seen that though O.P.No.3184 of 2005 was disposed of on 27.09.2010, the finding of the learned Additional Chief Judge in O.P.No.2624 of 2005 was not brought to the notice of the learned Sessions Judge while disposing of O.P.No.3184 of 2005. As a result, the learned Sessions Judge disposed of O.P.No.3184 of 2005 based on the material available before him and has held that the accident occurred due to composite negligence of the drivers of both the vehicles, i.e., Maruthi Car and Lorry.

In view of the conflicting decisions arrived at by the Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, at Hyderabad in O.P.No.2624 of 2005 and VII Additional Metropolitan Sessions Judge-cum-Motor Accidents Claims Tribunal, Hyderabad in O.P.No.3184 of 2005 in fastening the liability on different insurers, this Court deems it appropriate to set aside the orders of the Courts below and remand the matters to the Chief Judge, City Civil Court at Hyderabad, who in turn, shall dispose of the matters, as expeditiously as possible, preferably within a period of three months, from the date of receipt of a copy

of this judgment, in the light of the evidence already available on record and fasten the liability.

In the result, both the appeals are allowed, as stated above.
Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 10.07.2019

Note: L.R. Copy to be marked.

B/o. TJMR

