

THE HONOURABLE SMT. JUSTICE P. MADHAVI DEVI

M.A.C.M.A.NO.1483 OF 2016

J U D G M E N T

This Appeal is filed by the claimants challenging the order dt.23.02.2016 of the Motor Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad (for short, “the Tribunal”) dismissing the O.P.No.4 of 2015.

2. The claimants are the parents, wife and children of the deceased who died in the motor vehicle accident that occurred on 05.12.2014 involving DCM Van bearing No.AP 29U 0620 and one lorry bearing No.AP 07T 4189. The claimants filed O.P.No.4 of 2015 seeking compensation of Rs.25,00,000/- for the death of the deceased G. Naresh, S/o G. Parasu Ramulu. However, the Tribunal has dismissed the same by observing that the accident occurred due to the rash and negligent driving of the DCM van, i.e., by the deceased himself resulting in his death and not due to the negligence of the lorry driver. Challenging the said order, the present Appeal was filed.

3. Learned counsel for the appellants/claimants, Sri P. Ramakrishna Reddy, submitted that the deceased was the driver of the DCM van

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bearing No. AP 29U 0620 and he was driving from Hyderabad towards Narasaraopet side slowly on the extreme left side of the road and when they reached near Maruthi showroom, one lorry bearing No.AP 07T 4189 driven by its driver in high speed rashly and negligently proceeding in the same direction with a load of iron rods suddenly overtook another vehicle which was going ahead and suddenly came to the right side and applied sudden brakes and at that time the DCM van of the deceased came into contact with the iron rods which were protruding at the rear side of the crime lorry and the iron rods pierced forcibly into the body of the deceased and also into the body of the cleaner and the crime lorry had dragged the DCM van to a distance. The driver and the cleaner were shifted to the Government Hospital, Nalgonda by 108 ambulance and the driver had succumbed to injuries on the same day in the hospital while undergoing treatment. It is stated that the crime lorry was without any signals and clothes and red lights signalling that the iron rods were protruding from the rear body of the lorry and no flags were attached to the iron rods and no parking lights and red lights were displayed with regard to protruding of iron rods and therefore, the deceased died due to the rash and negligent driving of the lorry driver and there was no negligence on the part of the deceased. It is

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submitted that the police, Nalgonda Rural has registered a case in Crime No.253 of 2014 under Sections 304A and 337 of IPC. But the Tribunal has erroneously given a finding that the accident has occurred due to the rash and negligent driving of the deceased. In support of the contention that the claimants should be granted compensation in view of the fatal accident, the learned counsel for the appellants has placed reliance upon the following judgments.

(1) National Insurance Co. Ltd., Visakhapatnam Vs. Yakala Simhachalam and others¹.

(2) Bimla Devi and others Vs. Himachal Road Trans. Corpn. and others².

(3) Sneha Saularam Bankar and others Vs. Hanumant Vaman Pednekar and another³.

(4) U.P.S.R.T.C. through R.M. Faizabad Vs. Chakradhar Pandey⁴.

4. The learned counsel for the respondents, on the other hand, supported the order of the Tribunal and also placed reliance upon the following judgments.

¹ 2011 (2) ALD 611

² 2009 ACJ 1725

³ 2016 ACJ 1976

⁴ 2020 AAC 112 (ALL)

(1)Repaka Rajya Laxmi and others Vs. Poldasari Komuraiah and others⁵.

(2)Pooja and another Vs. Tot Ram and others⁶.

5. Having regard to the rival contentions and the material on record, it is noticed that the Tribunal has framed the following three issues at the time of trial.

(1)Whether the accident took place due to the rash and negligent driving of the lorry bearing No. AP 07 T 4189 by its driver causing death of G Naresh?

(2)Whether the petitioners are entitled for compensation? If so, to what extent and from whom?

(3)To what relief?

6. The Tribunal has recorded the statement of P.W.2 who is the cleaner of the DCM vehicle and also eye witness to the accident. He had denied the suggestion put to him by the learned counsel for the insurance company that the deceased had driven the DCM van in high speed and negligently and dashed into the lorry and caused the accident

⁵ 2009 ACJ 138

⁶ 2021 ACJ 504

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and that the driver of the lorry was not at fault. The Tribunal has thereafter recorded the statement of R.W.1 who represented respondent No.2 insurance company and who stated that the petitioners falsely stated that the lorry dashed against the DCM while overtaking, and created the story as an after-thought and in fact the deceased had driven the DCM van and dashed at the backside of the lorry and therefore, there is no negligence on the part of the driver of the lorry. After considering the said evidence and after verification of the scene of offence panchanama, the Tribunal observed that the vehicles proceeded ahead after the hitting to a distance of one kilometre and that it is not a case that the DCM van driver had driven the vehicle slowly. The Tribunal further observed that if the driver of the DCM vehicle was driving slowly, he could have stopped the vehicle immediately and the impact would not have been that much that the iron rods extended and protruded beyond the body of the lorry, pierced into the body of deceased. The Tribunal observed that the situation narrated by the parties and the Investigating Officer mentioned in the charge sheet clearly disclosed that the DCM vehicle was driven rashly in high speed and dashed against the lorry. The Tribunal further observed that application of brakes by the lorry driver can be taken as diligent driving

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and that he must have done it to avoid collision with front vehicle and that when such step was taken by the driver of the lorry under such circumstances, the driver of the lorry cannot be said to be negligent in driving the vehicle. Thus observing, the Tribunal held that the driver of the DCM vehicle was negligent and rash in driving the vehicle in high speed and dashed against the front lorry and caused the accident. Therefore, the Tribunal absolved the insurance company of its responsibility to pay compensation to the claimants.

7. Having gone through the judgments relied upon by the learned counsel for the claimants, it is seen that the Tribunal has relied upon the judgment of Andhra Pradesh High Court in the case of **Repaka Rajya Laxmi and others Vs. Poldasari Komuraiah and others** (5 supra) for holding the issue against the petitioners. The facts of the said case were that a tractor-trailer was involved and where the tractor-trailer was parked in the middle of the road without any indication or parking lights and the scooterist could not notice the stationed vehicle in the dark and dashed against it from behind and sustained fatal injuries. The Court observed that the driver of the tractor-trailer who is the eye witness to the accident did not appear in witness box to contradict the testimony of

the eye witness who had stated that the tractor-trailer was parked on the road side and the deceased himself was rash and negligent. By taking the same into consideration, the Court had held that the scooterist himself was rash and negligent. Hence, there was no negligence on the part of the tractor-trailer and the insurance company covering the policy of the tractor-trailer was not responsible for paying any compensation. However, in the case before this Court, though the driver of the lorry was not examined, the eye witness, i.e., the cleaner of the vehicle had been examined and he had clearly stated that the accident has occurred due to the rash and negligent driving of the lorry driver and that the sudden brakes applied by the driver of the lorry is the cause for the accident. Such evidence has not been rebutted by the insurance company except for a suggestion that the cleaner was mentioning incorrect facts. Therefore, this Court is of the opinion that the Tribunal ought not to have rejected the claim petition solely on the basis of the judgment of Andhra Pradesh High Court in the case of **Repaka Rajya Laxmi and others Vs. Poldasari Komuraiah and others** (5 supra).

8. The Hon'ble Supreme Court in the case of **Bimla Devi and others Vs. Himachal Road Trans. Corpn. and others** (2 supra) has

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observed that strict proof of accident caused by a particular bus in a particular manner may not be possible for the claimants and the claimants were merely to establish their case on the touchstone of preponderance of probability and the standard of proof beyond reasonable doubt could not have been applied and apparently there was no reason to falsely implicate the driver and conductor of the bus. It was held that the driver of the bus was negligent and responsible for the accident. The facts in the said case were that the driver reversed the bus at the bus stand in the morning without blowing horn and it hit a police constable resulting in his death and the defence was that the deceased died in the previous evening and finding the dead body wrapped in a blanket lying at some distance from the bus, the driver and conductor informed the police and they have been falsely implicated. The eye witness corroborated the claimants' version. The Tribunal however did not accept the statement of the driver and found that the deceased was standing behind the bus and he sustained injuries in the course of accident with the bus. The High Court reversed the said finding on the ground that there are no details of injuries of tyre marks and thorax and abdomen were found normal and the deceased suffered injury in his head and therefore held that the deceased might have died in some other

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accident. The Hon'ble Supreme Court observed that the deceased was a constable and that it is unlikely that his dead body would have remained undetected throughout the night when it was lying at a bus stand near a police station in a small town and it was in these circumstances, the Supreme Court held that the driver of the bus was negligent and responsible for the accident. In the case before this Court also, the deceased was driving the DCM van and as admitted by the learned counsel for the petitioners as well as the respondents, the lorry was carrying iron rods which were protruding out of the lorry and have pierced into the body of the deceased driver when it collided with the lorry on the application of a sudden brake by the driver of the lorry. It is also not in dispute that the lorry had applied sudden brakes. It was the duty of the lorry owner to have flagged the rear of the vehicle to warn the vehicles coming behind it about the protruding iron rods. When no such signals were displayed by the lorry owner and the accident has occurred in the darkness of the night, it is but natural that the driver of the DCM vehicle could not have noticed the protruding iron rods and could not have applied the brakes immediately to avoid the accident. The accident had occurred at about 2.00 A.M., i.e., into the darkness of the night of 05.12.2014. Therefore, the finding of the Tribunal that the

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deceased driver was at fault and that the accident has occurred due to his negligence is clearly erroneous.

9. In the case of **Sneha Saularam Bankar and others Vs. Hanumant Vaman Pednekar and another** (3 supra), the High Court of Judicature at Bombay, Goa Bench has held that the claim before the Motor Accidents Claims Tribunal is neither a criminal case nor a civil case and that the standard of proof is much below than what is required in criminal and civil cases and since the enquiry before the Tribunal is summary enquiry, it does not require strict proof of liability and that FIR, charge-sheet, testimonies of widow of the deceased and independent eye witness are sufficient to establish negligence on the part of the driver of the crime vehicle and therefore, the findings of the Tribunal therein were set aside.

10. The Lucknow Bench of Allahabad High Court in the case of **U.P.S.R.T.C. through R.M. Faizabad Vs. Chakradhar Pandey** (4 supra) also has held that the Tribunal's role would be to calculate quantum of just compensation and it would not be strictly bound by pleadings of parties and the standard of proof must be of preponderance

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of probabilities and strict standard of proof beyond all reasonable doubt cannot be applied.

11. In the case of **National Insurance Co. Ltd., Visakhapatnam Vs. Yakala Simhachalam and others** (1 supra), the Andhra Pradesh High Court had held that after due investigation, police filed charge sheet against the driver of Maruthi car and prosecuted him for offence of rash and negligent driving and the person travelling in the tractor at the time of the accident also testified that tractor was proceeding on left side of the road when the accident took place. The Court held that such evidence cannot be discredited.

12. From the above decisions, it is clear that the claimants being the family members of the deceased are not expected to prove the negligence of the other vehicle beyond all reasonable doubt and that the issue of negligence is to be proved only on preponderance of probabilities. In view of the evidence of the eye witness who is the cleaner of the vehicle and also in view of the fact that the police registered a case against the lorry driver and have tried him under Sections 304A and 337 IPC, this Court is of the opinion that the death of the deceased was due to the rash and negligent driving of the driver of

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the lorry. In view of the same, the finding of the Tribunal is set aside and the matter is remitted back to the file of the Tribunal for computation of the just and fair compensation. In view of the fact that more than 8 years have been passed after the accident, i.e., 2014 to 2022, this Court directs the Tribunal to dispose of the claim petition of the claimants within a period of three (3) months from the date of receipt of a copy of this judgment.

13. The Appeal is accordingly allowed. No order as to costs.

14. Pending miscellaneous petitions, if any, in this MACMA shall stand closed.

JUSTICE P. MADHAVI DEVI

Date: 10.10.2022

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