

HONOURABLE SRI JUSTICE N. TUKARAMJI

MACMA.No.1559 of 2013

JUDGMENT:

This appeal has been filed by the insurer of the lorry/3rd respondent questioning the liability fastened in the decree and award dated 06.01.2006 in O.P.No.3 of 1999 on the file of the MACT-cum-II Additional District Judge, Mahabubnagar.

2. The facts in brief are that on 03.09.1997 at about 2.30 a.m. while Mohd.Abdul Rawoof/deceased was travelling as co-driver of the APSRTC bus bearing No.AP-10-Z-3156 (for short, 'the bus') near Solapur Highway Varkad village, the bus was driven in a rash and negligent manner and dashed the lorry bearing No.CNP 4411 (for short, 'the lorry'), which was proceeding in opposite way, as a result, Abdul Rawoof/deceased, who was sleeping near the driver seat suffered fatal injuries and while undergoing treatment died on 09.09.1997. Thereupon, pleading

loss of dependency, the wife, children and the mother of the deceased filed a petition seeking compensation of Rs.5,00,000/- for the loss of dependency.

3. The Tribunal, on analyzing the evidence on record, held that as the accident was head on collision and the evidence of eye witness is indicating that the accident occurred in the middle of the road due to damage to the tyre of the lorry, opined that the drivers of both the vehicles were negligent in causing the accident and fixed equal liability (50:50) on both the vehicles and directed the APSRTC/1st respondent and the owner and insurer of the lorry/2nd and 3rd respondents to pay compensation of Rs.3,82,000/- with interest @ 7.5% per annum.

4. Aggrieved by the fastened liability, the 3rd respondent/insurer of the lorry in this appeal contested that when the police record is clearly against the Bus, the Tribunal had erred in fixing the liability against the lorry. Further, the APSRTC/1st Respondent failed to

place any tenable material to prove the aspect of contributory negligence by the driver of the lorry. Hence, prayed for setting aside the finding of contributory negligence on the part of the lorry and to exonerate the insurer/3rd respondent.

5. Learned counsel for the 1st respondent / APSRTC would submit that as there is involvement of lorry and the bus and it was head on collision, the Tribunal had rightly considered the facts and circumstances and properly fixed the contributory negligence on the part of the driver of the lorry in causing accident. Thus, prayed for dismissal of the appeal.

6. The 1st to 4th respondents/Claim Petitioners remained silent.

7. On these rival pleadings, the point arises for determination is whether the finding of contributory negligence on the part of the driver of the lorry is sustainable?

8. The 1st and 4th respondents/petitioners claimed that the accident occurred due to rash and negligent driving of the driver of the Bus. The then conductor of the bus as PW.2 in his chief affidavit categorically stated that the accident occurred only due to negligent driving of the bus. Further, specified that the driver of the bus had driven the vehicle at high speed and in a rash and negligent manner. In cross-examination by the 1st respondent / APSRTC, the PW2 stated that due to the damage of the tyre of the lorry, both the vehicles collided and caused accident. Further the suggestion of the 3rd respondent that at the time of accident, the lorry was totally on the left side of the road was denied. However asserted that the driver of the bus was at fault for the accident and the accident occurred due to the negligence of the driver of the bus. It is pertinent to note that the Police after investigation charge-sheeted the driver of the bus. Further, the record is disclosing that in the FIR/ Ex.A-1, which was lodged by the driver

of the truck, had specifically mentioned that the bus came in the opposite direction and dashed his truck on the driver's side and due to that jolt, the front tyre was burst as such, his truck went towards right side of the road and stopped and he could not move the truck. In this regard there is no other material on record. Therefore, no reason is found to discredit the version in the first information statement that the tyre of the truck was burst in the accident. Further, the PW2 even in cross examination maintained that the negligent driving of the bus is the cause for the accident, which is corroborating with the conclusions of the investigating agency.

9. Therefore, the findings recorded by the Tribunal regarding the contributory negligence of the lorry, is in disagreement with the material on record. Consequently, the contributory negligence fastened against the driver of the lorry cannot be sustained and deserves to be set aside. Meaning thereby, the 1st

Respondent/APSRTC shall alone be held liable to pay the compensation awarded to the 1st to 4th Respondents/claim petitioners.

10. Accordingly, this appeal is allowed. The finding of the contributory negligence against the 2nd & 3rd respondents and fastening the liability to pay the compensation of 50% to the petitioners, is set aside. The 1st respondent is directed to pay entire awarded compensation to the petitioners within one month from the date of receipt of a copy of this order.

11. Learned counsel for the 3rd respondent/insurer of the lorry brought to the notice that the appellant /3rd Respondent had deposited amount of Rs.25,000/- and the same was permitted to be withdrawn by the claimants/petitioners and the other amounts are lying with the court deposit.

12. Considering this situation, liberty is granted to the 3rd respondent/insurer of the lorry to recover the

amounts disbursed to the claimants from the 1st respondent/APSRTC and permission is accorded to take back the undisbursed deposited amounts, if any.

13. As a sequel, miscellaneous petitions, pending if any, shall stand closed.

N.TUKARAMJI, J

Date:18.08.2022

Prv