
(2014) 06 AP CK 0007
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 564 of 2009

National Insurance Company Ltd.

APPELLANT

Vs

Mutyala Bhaskara Surya Kanthamma

RESPONDENT

Date of Decision : 09-06-2014

Acts Referred:

Citation : (2015) ACJ 2014 : (2014) 5 ALT 559 : (2014) 2 AnWR 858

Hon'ble Judges : U. Durga Prasad Rao, J

Bench : Single Bench

Advocate : N. Mohan Krishna, Advocate for the Appellant; Deepak Bhattacharjee, Sri N.S. Bhaskara Rao and Josyula Bhaskara Rao, Advocate for the Respondent

Final Decision : Allowed

Judgement

U. Durga Prasad Rao, J.—Challenging the award dated 03.10.2002 passed in O.P. No. 116 of 1998 by the Chairman, MACT-cum-I Additional District Judge, West Godavari, Eluru (for short "the Tribunal"), the appellant/Insurance Company preferred the instant appeal.

The appellant herein is the fifth respondent; first respondent herein is the claimant; respondent No. 2 herein is the respondent No. 1; respondent No. 3 herein is the respondent No. 2; respondent No. 4 herein is the respondent No. 3; respondent No. 5 herein is the respondent No. 4 before the Tribunal.

2. The factual matrix of the case is thus:

a) The claimant is the mother of deceased--Mutyala Madhava Satya Prakasa Rao. Her case is that on 07.10.1994 at about 4:00 a.m., while the deceased along with others was travelling in an ambassador car bearing No. ATP 3777 from Eluru to Tadepalligudem and when they reached near the outskirts of Eluru Town in the Palagudem village limits, one lorry bearing No. KA 22 9192 which was proceeding from Tadepalligudem to Goa, being driven by its driver/1st respondent at high speed and in a rash and negligent manner and dashed the ambassador car, due

to which the car was completely damaged and was thrown into western side drain and the lorry turned turtled into the same western side drain. In the resultant accident, three passengers including the deceased and the driver of the ambassador car died and the driver and cleaner of the lorry and other persons sustained injuries. It is averred that the accident was occurred due to the rash and negligent driving of the 1st respondent and ambassador car drivers. It is pleaded that deceased used to earn Rs. 6,000/- p.m. as a stamp vendor and fend his family. On these pleas, the claimant filed O.P. No. 116 of 1998 against respondents 1 to 3, who are driver, owner and insurer of the lorry and respondents 4 and 5, who are owner and insurer of the ambassador car and claimed Rs. 2,00,000/- as compensation under different heads mentioned in the O.P.

b) Respondents 1, 2 and 4 remained ex parte.

c) Respondent No. 3/Insurer of the lorry filed written statement and denied the material averments made in the petition and urged to put the claimant in strict proof of the same. R. 3 contended that 1st respondent who is the driver of the lorry bearing No. KA 22 9192; had no valid and effective driving licence at the time of accident; that the 2nd respondent is the owner of the said vehicle and that the lorry was not insured with it. R. 3 submitted that if at all the Tribunal holds that this respondent is liable to pay compensation then the liability should not be more than 50% of the compensation as the fault in the accident also lies with the ambassador car driver. R. 3 contended that the claim is highly excessive and exorbitant.

d) Respondent No. 5/Insurer of the ambassador car filed written statement and denied the material averments made in the petition and urged to put the claimant in strict proof of the same. R. 5 contended that the accident was occurred due to the negligence of the 1st respondent but not due to the driver of the ambassador car, as such it is not liable to pay compensation and R. 3 who is the insurer of the lorry has to indemnify. R. 5 further contended that the claim is highly excessive and thus, prayed for dismissal of the O.P.

e) During trial, P.Ws. 1 and 2 were examined and Exs. A1 to A3 were marked on behalf of the claimant. R.Ws. 1 and 2 were examined and Exs. B1 to B11 were marked on behalf of respondents.

f) A perusal of the award shows that considering the oral evidence of P.W. 2--eye witness coupled with Ex. A1-FIR, Ex. A2-postmortem certificate and Ex. A. 3-M.V.I. Report, the Tribunal held that drivers of both the vehicles are responsible for the accident in which the deceased died.

g) Coming to the quantum of compensation, the Tribunal granted total compensation of Rs. 1,39,000/- @ 7.5% p.a. from the date of OP till the date of realization under different heads as below:

Hence, the appeal by the Insurance Company/R. 5 in the O.P.

3. Heard arguments of Sri N. Mohan Krishna, learned counsel for appellant, Sri Deepak Bhattacharjee, learned counsel for R. 1/claimant, Sri N.S. Bhaskar Rao, learned counsel for R. 4 and Sri Josyula Bhaskara Rao, learned counsel for R. 5. Appeal against R. 2 and R. 3 was dismissed for default on 15.12.2008. However, in view of the fact that R. 3 remained ex parte and suffered decree before the Tribunal, his absence will not have any effect in the appeal in the light of decision reported in Meka Chakra Rao vs. Yelubandi Babu Rao @ Reddemma and others 2001 (1) ALT 485.

4. Criticizing the award, learned counsel for the appellant firstly argued that the Tribunal erred in holding that drivers of both the vehicles i.e. lorry and car were equally responsible for the accident. The F.I.R. which was lodged by none other than the lorry driver himself would clearly show that while overtaking his front vehicle, he went towards his further right side and unable to locate the opposite coming car, he dashed it and thereby both the vehicles fell into road side drain. Thus, the F.I.R. demonstratively proves the guilt of the lorry driver. Further, the police after investigation laid charge sheet against the lorry driver. Learned counsel further argued that in the connected O.P. No. 131 of 1995 (exhibit B1), the MACT-cum-I Additional District Judge held that the fault in the accident lies with the lorry driver. However, the Tribunal basing on the evidence of P.W. 2 came to an erroneous conclusion that both the vehicles were responsible for the accident. He, thus, prayed to fix the responsibility on lorry driver and exonerate the owner and insurer of the car from the liability.

Secondly, he argued that in the event of fixing liability on the owner and insurer of the car also, interest may be reduced from 9% to 7.5% as the same is usurious. Respondent No. 5/owner of the car adopted the arguments of the appellant. Counsel for respondent No. 1/claimant and respondent No. 4/Oriental Insurance Company supported the award and prayed for dismissal of the appeal.

5. In the light of the above arguments, the points for determination in this appeal are:

(i) Whether the lorry driver or the car driver or both were at fault in the accident?

(ii) To what relief?

6. POINT No. 1

Admittedly, the accident was occurred on the early hours on 07.10.1994 at about 4.00 AM, in the outskirts of Eluru in the village limits of palagudem when the lorry dashed the opposite coming car. The claimant filed MVOP on the plea that drivers of both the vehicles were at fault. She examined P.W. 2-P. Adinarayana as eye witness who traveled in the car. He deposed that himself, the deceased-M. Madhava Satya Prakash Rao and two others were travelling in the car from Vijayawada to Ramachandrapuram and after crossing Eluru, the driver of the Car drove the vehicle at high speed and in the meanwhile lorry came in the opposite side and dashed the car and as a result the driver of the car and two others died

and he (P.W. 2) sustained injuries. This witness deposed that both the drivers were responsible for the accident. In the cross examination, he stated that he was sitting in the rear side of the car and he did not give any report to the police. He denied the suggestion that as he was sitting in the rear side of the vehicle there was no possibility for him to witness the accident. This is the evidence of P.W. 2 relating to the manner of occurrence of the accident.

a) Be that as it may, the insurer of the car (5th respondent in the O.P) got examined its Senior Assistant as R.W. 1 and filed through him the certified copy of the award in connected O.P. No. 131 of 1995 (exhibit B1). The contention of respondent No. 5 was that in O.P. No. 131 of 1995, the MACT-cum-I Additional District Court held that the accident was occurred due to the fault of lorry driver. R.W. 1 in his cross examination admitted his ignorance about the other connected O.P. Nos. 145 and 147 of 1995 and Tribunal holding responsibility on drivers of both the vehicles.

b) Thus the Tribunal confronted with the oral evidence of P.W. 2 and RW 1 and also exhibits A1 to A3 and exhibit B1 to decide the fault of concerned driver. Perusal of the award would show that the Tribunal observed that the two different Tribunals gave two different opinions i.e. in O.P. No. 131 of 1995, the MACT-cum-I Additional District Judge held that the lorry driver was responsible for the accident; whereas, in O.P. Nos. 145 and 147 of 1995, the MACT-cum-II Additional District Judge held that drivers of both the vehicles were responsible for the accident. While observing so, it appears that the Tribunal without giving priority to the awards of the other Tribunals, went on deciding the issue basing on the evidence placed before it. Thus, basing on the evidence of P.W. 2 who deposed that the drivers of both the vehicles were responsible for the accident, the Tribunal held that drivers of both the vehicles were responsible for the accident. This finding is impugned in the instant appeal by the appellant.

7. On a careful perusal of the entire evidence, I find force in the submission of the appellant. The lorry driver himself gave F.I.R. wherein he clearly mentioned that before accident he was overtaking the road side stationed lorry and in that process, he was unable to clearly locate the opposite coming car and thereby he went and dashed the car as his attempt to apply sudden brakes did not fructify to control the vehicle. The police, after investigation, found fault with the lorry driver and charge sheeted him. Since the fault of the lorry driver is manifest from his own narration as can be found in exhibit A1 F.I.R., there is no need to give much weight to the evidence of P.W. 2. It may be noted that the lorry driver was not examined in the Court to deny the facts mentioned by him in the F.I.R. Therefore, his own version in the F.I.R. can be accepted to fix the liability on him. The Tribunal may be right in rejecting the divergent findings contained in the awards passed by the other Tribunals because those awards are not binding on it, but in appreciating the evidence available before it, it must be said, the Tribunal has not properly appreciated the admission made by the lorry driver in the F.I.R. Therefore, the lorry driver is held responsible for the accident and

accordingly, the liability is fixed on respondents 1 to 3 in the O.P. Consequently, respondents 4 and 5 who are the owner and insurer of the car are exonerated.

a) It may be noted that the third respondent in the O.P. contended as if the lorry driver had no valid driving licence. However, the Tribunal basing on the evidence on record rejected its contention. Since respondent No. 3 in the O.P. has not challenged the said finding by filing an appeal, the same is not discussed in this appeal.

8. Before parting, it must be mentioned that one of the cardinal principles of case management to be followed by numbering Courts is to group the identical cases and post them to a single Court as far as possible to avoid conflicting judgments as in the instant case. Unfortunately, the same is sorely missing here. Hence, the Registrar (Judicial) shall circulate the copy of this judgment to all the Principal Courts having power to make over the matters to other Courts to scrupulously follow the aforesaid principle.

9. In the result, the M.A.C.M.A. is allowed by setting aside the award of the Tribunal in so far as liability of respondents 4 and 5 in the MVOPs is concerned and ordered as follows:

(i) Compensation of Rs. 1,39,000/- with proportionate costs and interest at 9% per annum awarded by the Tribunal shall be paid by respondents 1 to 3 jointly and severally.

(ii) The O.P. is dismissed as against respondents 4 and 5.

(iii) Pending appeal, if respondents 4 and 5 paid any amount to claimant, they are at liberty to recover the same from respondents 1 to 3 in which case the respondents 1 to 3 shall be liable to pay the balance amount only to claimant to fulfill their liability.

(iv) No costs in the appeal.