

(2000) 02 AP CK 0036
In the Andhra Pradesh High Court
Case No : AAO No. 1470 of 1993

Pagidimarri Suvarna and others	Vs	APPELLANT
Kota Venkateswarlu and another		RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2000) 2 ACC 221 : (2002) ACJ 726 : AIR 2000 AP 332 : (2000) 3 ALD 586 : (2000) 3 ALT 453 : (2000) 1 APLJ 411

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : Mr. B. Viswanatha Reddy, for the Appellant; Mr. Anand Rao and Mr. Venkat Rao, for the Respondent

Judgement

1. The claimants in OP No.901 of 1990 filed this appeal questioning the order of the Motor Accidents Claims Tribunal, Nalgonda dated 27-4-1993.
2. The first appellant is the wife of the deceased and the appellant Nos.2 and 3 are the sons of the deceased and the appellant No.4 is the mother of the deceased. The first respondent is the owner of the offending vehicle i.e., jeep Bearing No.AAY No.4390 and the second respondent is the Insurance Company with whom the jeep was insured.
3. The brief facts of the case are that the deceased Sri Shekar and his two sons while returning from Nakrekal of Nalgonda District in a jeep Bearing No.AAY 4390 belonging to the first respondent the accident took place due to the rash and negligent driving of the driver of the jeep and the driver of the lorry which were driven in a high speed resulting in accident in which deceased Shekar and his sons died. The accident took place on 17-9-1990. Hence they claimed for total compensation amount of Rs.3,00,000/-.
4. With regard to the issue that whether the accident took place due to the rash and negligent driving of the jeep Bearing No. AAY 4390, the Tribunal held that it

has no hesitation to disbelieve the evidence of PWs. 1 to 3 as a whole and their evidence is not accepted with regard to the accident but held that there is no evidence to show that the accident occurred on account of the rash and negligent driving of any of the vehicles and drawn an inference that it may be a providential accident on account of negligence by both the vehicles i.e., the jeep and the lorry or on account of error of judgment by both the sides, one vehicle cannot be picked up. The Tribunal further held that the accident did not occur on account of the rash and negligent driving of any of the vehicles as there is no evidence and awarded compensation under no fault liability.

5. With regard to quantum of compensation the Tribunal held that income of the deceased can be easily be taken as Rs.1,500/- and his contribution to the family would be Rs.700/- per month and the Tribunal has calculated total compensation at Rs.1,84,800/- and granted only Rs.25,000/-under no fault liability.

6. The first appellant, wife of the deceased who was examined as PW1 stated that her husband died due to the motor vehicle accident that occurred on 17-9-1990 and her son also died in the same accident while they were returning from Nakrekat. His son died on the spot and her husband received grievous injuries and immediately after the accident she rushed to the scene of accident and inspected the scene of accident which revealed that the accident occurred due to the rash and negligent driving of the driver of the jeep and a lorry and her husband was shifted to the Government Hospital, Nalgonda from the scene of the accident. She stated that he used to contribute Rs.2,000/- per month to the family and his monthly earnings were Rs.3,000/-. The respondent No.1 not at all cross-examined her but there was a cross-examination on behalf of the second respondent and the 2nd respondent did not suggest anything about the rash and negligent act, or driving of the driver of the jeep but only gave a suggestion that the earning of her husband was not Rs.3,000/-.

7. The third appellant Sri P. Motion who was travelling along with his father in the same jeep examined himself as PW2 and stated on oath that the deceased is his father and stated that while he was returning from Nakrekal along with his father and brother in the offending jeep the accident took place due to rash and negligent driving of the driver of the lorry and the lorry came from the opposite side and there was a collusion between the two vehicles in which his brother died on the spot. There was no cross-examination by the first respondent and there was cross-examination on behalf of the 2nd respondent and the suggestion that the accident occurred only due to the rash and negligent driving of the lorry and the suggestion that there was no negligence on the part of the driver of the jeep was denied. He further stated that when he was examined by the police he stated that the accident occurred due to the rash and negligent driving of both the vehicles involved in the accident.

8. One Ram Bahadur a night watchman working in a Pannalgudem was examined as PW3 and he stated that he witnessed the accident and there was a collusion between the jeep and the lorry and the lorry was coming from Hyderabad side

proceeding towards Vijayawada and the jeep was proceeding from Vijayawada side to Hyderabad side and both the vehicles were being driven at a high speed and he was on the road side at the time of the accident and one child died and three persons received injuries as a result of the accident and the lorry was speed away after causing the accident and he himself telephoned to the police and informed them about the accident. He shifted the injured to the Government Hospital and he was also examined by the police. The respondent No. 1 did not cross-examine him. But there was a cross-examination by the second respondent and he denied the suggestion that he did not witness the accident and stated that he was very near to the scene of accident. When this being the evidence available on the record and when there was no other evidence contrary to the evidence recorded by the learned District Judge, the learned Judge ought not to have come to a conclusion that there was no evidence to show that the accident occurred on account of the rash and negligent driving of any of the vehicle. Hence I have no hesitation, to believe the oral evidence of PWs.1 to 3 and the evidence clearly shows that the accident occurred due to the rash and negligent driving of both the vehicles and the accident occurred due to the composite action of both the drivers of the jeep and the lorry. I therefore hold that the quantum of compensation arrived at Rs. 1,84,800/- has to be contributed by both the offending vehicles and as it is not known as to who was the owner and the insurer of the lorry, half of the compensation amount has to be fastened to the respondents 1 and 2.

9. In the result the appeal is allowed granting the compensation of Rs.92,400/- payable by the respondents 1 and 2 jointly and severally along with interest at 12% per annum from the date of filing of the petition till the date of the realisation. The order in OP No.901 of 1990 is accordingly, modified. No costs.