
(2008) 02 AP CK 0015

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 1384 of 2000

Sombathina Ramu

APPELLANT

Vs

T. Srinivasulu and Another

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Citation : (2009) ACJ 187 : (2008) 3 ALD 362 : (2008) 4 ALT 14

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : C. Prakash Reddy, for the Appellant; R. Venkat Rao and Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Nooty Ramamohana Rao, J.—This C.M.A. is directed against the order, dated 27.01.1999 rendered by the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Kadapa in M.V.O.P. No. 836 of 1995.

2. The appellant was working as cleaner on a truck bearing registration No. AP-04-T-2299 owned by the first respondent herein. The second respondent has issued the insurance cover, which is marked as Ex.B-1. The appellant-claimant had asserted that the truck in question was proceeding from Delhi to Madras which has been booked up for commercial cargo and en route met with a collision head on with an oil tanker coming in the opposite direction at Dhalghat village in Madhya Pradesh. The appellant was admitted along with the truck driver to the local hospital and from there he had been shifted to M.Y. Hospital, at Indore, Madhya Pradesh State. After a week's treatment there, at his request, the appellant has been discharged and brought over to Kadapa where he has been admitted in the District Headquarters Hospital and he was subsequently shifted for better medical care to S.V.R.R. Hospital, Tirupathi. The appellant-claimant had asserted that he had undergone surgery during hospitalization at S.V.R.R. Tirupathi. He claimed a total amount of Rs. 1,25,000/- as compensation. He put- forth his claim by examining himself as PW-1 and the Orthopaedic

Surgeon attached to S.V.R.R. Hospital, who had treated him has been examined as PW-2. The appellant has marked a copy of the F.I.R. as Ex.A-1. Ex.A-2 is the copy of the wound certificate issued indicating the extent of injuries sustained by him in the accident. Ex.A-5 is the outpatient admission chit of the Hospital at Indore, Madhya Pradesh State while Exs.A-6 and A-7 are the similar admission chits of the Government General Hospital, Tirupathi. Ex.A-8 is a bunch of prescriptions of various medicines issued by the attending physicians on the appellant. A bunch of 16 bills indicating the medicines purchased have been got marked as Ex.A-9. Ex.A-4 is the x-ray film belonging to the appellant reflecting three fractures sustained by him in the accident in question. Ex.A-3 is the disability certificate issued to the appellant setting out that the appellant had suffered permanent disability and the percentage is assessed to be at 25%.

3. Though the Insurance Company has disputed the accident in question to have occurred and also the factum that the appellant is employed as cleaner on the truck owned by the first respondent, it did not pursue those objections in view of the clinching evidence produced by the appellant indicating his admission to a hospital at far off Indore in Madhya Pradesh State and the subsequent follow-up of the same at the District Headquarters Hospital at Kadapa and S.V.R.R. Hospital, Tirupathi. The finding, therefore, recorded by the Tribunal that the accident in question had taken place involving the truck bearing No. AP-04-T-2299 by the first respondent is beyond any reasonable doubt in view of Ex.A-1 copy of the F.I.R. Therefore, the Tribunal had arrived at a correct conclusion that the truck owned by the first respondent is one of the two trucks which got involved in the accident and that the claimant-appellant is also injured grievously in the said accident apart from the injury sustained by the driver of the said truck. Therefore, there is no difficulty in affirming the finding of fact recorded by the Tribunal.

4. However, the contention canvassed by the second respondent-insurance company that without impleading the owner of the oil tanker and its insurer, which is the other vehicle, involved in the accident, the second respondent herein cannot be mulcted with the accountability and the liability to pay for the entire quantum of compensation, has been accepted by the Tribunal. The Tribunal had found that both the vehicles namely, the truck owned by the first respondent and the oil tanker have contributed for the accident that had occasioned. Therefore, it has considered it appropriate to apportion the compensation amount payable equally between the owners of both the vehicles and hence, it had confined the liability, jointly and severally on the respondents 1 and 2 herein only to the extent of 50%. Since the appellant-claimant has not impleaded the owner and the insurer of the oil tanker involved in the accident, the Tribunal has denied payment of the balance 50% of the compensation of Rs. 62,500/-.

5. The Trial Court had, after an elaborate exercise, arrived at the total compensation payable to the claimant-appellant at Rs. 1,35,000/-. But, since the appellant-claimant had confined his claim to Rs. 1,25,000/- only, it had awarded

Rs. 62,500/- representing 50% thereof.

6. The learned Counsel for the appellant had pointed out that a person who has sustained injuries in an accident caused by the composite negligence of the drivers of two trucks has got a right to recover the compensation from both of them or either of them. In support of his contention, he has placed reliance upon the judgment rendered by a learned Single Judge of this Court in Syed Ibrahim Vs. The Union of India (UOI) and Another, and a Division Bench judgment of the Allahabad High Court rendered in Raghib Nasim and Anr. v. Naseem Ahmad and Ors. 1986 ACJ 405, judgment of a learned Single Judge of the Madhya Pradesh High Court in Meera Bai and Others Vs. Mishri Lal and Others, and the Division Bench Judgment of the Madhya Pradesh High Court in Gujarath State Road Transport Corporation and Ors. v. Sharada Bai and Ors. 1997 ACJ 649.

7. When a person is injured without his playing directly or indirectly any role or without any negligence on his part, but yet as a result of negligence on the part of another person or due to the negligence of two or more persons, then in such a case, it cannot be construed as a case of contributory negligence. The theory of contributory negligence therefore, requires and recognizes the role played by the injured either directly or even remotely in the occasion of the accident which caused the injury. Therefore, without there being any part or role played in the accident in question, a third party cannot be described as a contributor or causative factor for the injury. In all such cases, the injury is said to have occasioned wholly due to the composite negligence of others. In a case of composite negligence, the person who has been wronged has a choice of initiating proceedings against all or any one of more than one or the wrong doers. Every wrong doer becomes liable for the whole of the damage that has been caused or meted out. The concept of composite negligence has been explained in the following manner:

Where negligent acts of two or more independent persons have between them caused damage to a third, the sufferer is not driven to apply any such analysis to find out whom he can sue. He is entitled of course, within the limits set out by the general rules as to remoteness of damage to sue all or any one of the negligent persons. It is no concern of his whether there is any duty of contribution or indemnity as between these persons though in any case he cannot recover in the whole more than his whole damage.

8. While dealing with somewhat a similar issue, the Division Bench of the Madhya Pradesh High Court speaking through R.D. Shukla, J, has summarized the legal position in the following manner:

The next point that arises for consideration in the case is as to whether the claim would not be maintainable as the owner and insurer of the car have not been made party and as to whether G.S.R.T.C. would be liable to make payment to the extent of 2/3rd of amount only.

This is a case of composite negligence. The driver of the motor car and motor

bus both were responsible for the accident to the extent of 1/3rd and 2/3rd. Deceased was occupant of the car. He himself was not driving the vehicle and, therefore, he could not be said to have contributed to the accident.

In such a situation, this will be taken to be a case of composite negligence and the drivers of motor bus and car would be deemed to be joint tortfeasors. A similar question arose before a Division Bench of this Court in a case reported in *Manjula Devi Bhuta v. Manusri Raha* 1968 ACJ 1 (M.P.), the following answer given in that case would be a complete answer to the question posed in this case also:

Where a person is injured without any negligence on his part but as a combined effect of the negligence of two other persons, it is not a case of contributory negligence but is a case of what is styled as "composite negligence". If due to the negligence of "A" and "B", "Z" has been injured, "Z" can sue both "A" and "B" for the whole damage. There is a clear distinction between contributory negligence and what is termed as "composite negligence". The term "composite negligence" applies solely to the conduct of a plaintiff. It means that there has been an act of omission on his part, which has materially contributed to the damage.

xxx xxx xxx It is now well-settled that in case of contributory negligence, courts have power to apportion the loss between the parties as seems just and equitable. Apportionment in that context means that damages are reduced to such an extent as the court thinks just and equitable having regard to the claim shared in the responsibility for the damage. But, in a case where there has been no contributory negligence on the part of the victim, the question of apportionment does not arise.

xxx xxx xxx Where a person is injured without any negligence on his part but as a result of the combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled by Pollock as injury by composite negligence.

The following observations made in *Law of Torts*, 22nd Edn., 1992, by Justice G.P. Singh are also relevant for the purpose:

In a suit for "composite negligence" the plaintiff is not bound to a strict analysis of the proximate or immediate cause of the event to find out whom he can sue. Subject to the rules as to remoteness of damage, he is entitled to sue all or any of the negligent persons and it is no concern of his whether there is any duty of contribution or indemnity as between those persons, though in any case he cannot recover on the whole more than his whole damage. He has a right to recover the full amount of damages from any of the defendants.

In assessing damages against joint tortfeasors one set of damages will be fixed, and they must be assessed according to the aggregate amount of injury resulting from the common act. The damages cannot be apportioned so as to award one

sum against one defendant and Anr. against the other defendant, though they may have been guilty in unequal degree. If two omnibuses are racing and one of them runs over a man who is crossing the road and has no time to get out of the way, the injured person has a remedy against the proprietor of either omnibus.

Those who are sued cannot insist on having the others joined as defendants. The mere omission to sue some of them will not disentitle the plaintiff from claiming full relief against those who are sued.

9. Same is the view expressed by the Division Bench of the Allahabad High Court in RAGHIB NASIM'S case (2 supra) and that of the learned Single Judge of this Court in SYED IBRAHIM's case (1 supra).

10. Therefore, the legal principle that emerges is that only in cases of contributory negligence, the contributor of such negligence cannot make a claim for payment of compensation in whole without accounting for his part of contribution. In other words, the extent of the role played by him as assessed by the Court will be taken into account and consideration for the purpose of setting off to a corresponding extent the payment of compensation for the injuries sustained. But, however, in cases of composite negligence, the suitor, having no role to play either directly or remotely and having not contributed any negligence to the causative factors of the injury, is therefore entitled to seek compensation from all of them or any one of them. It is a choice left to him. Correspondingly, it does not lie in the mouth of one of the wrong doers to insist upon the other or all the wrong doers also either to be impleaded or proportionately mulcted with the obligation to compensate the injured. I, therefore, find force in the submission made by the learned Counsel for the appellant Sri C.Prakash Reddy and hold that the appellant is entitled to recover the whole of the compensation from the first respondent, the owner of the truck. Since the second respondent-insurer had undertaken to indemnify the first respondent because of the contract entered into as evidenced by Ex.B-1, the liability in this regard becomes joint and several.

11. Accordingly, the C.M.A. is allowed and the balance 50% of the compensation of Rs. 62,500/- shall also become liable to be paid to the appellant herein. Though the Tribunal has awarded payment of interest at 12% per annum, but, however, due to the declarations of the prime lending rates by the Reserve Bank of India from time to time, no Nationalised Bank is offering interest on any of the fixed deposits beyond 8 or 9 per cent per annum in recent times. I, therefore, consider it appropriate to order for payment of interest at 8% per annum on the additional amount of compensation now ordered to be paid. No costs.