Shaik Ali Saheb and Another Vs K. Rajashree and Another

Court: Andhra Pradesh High Court

Date of Decision: Aug. 11, 2006

Citation: (2007) ACJ 603 : (2006) 6 ALD 59 : (2006) 6 ALT 122 : (2006) 3 APLJ 372

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: P. Lakshmi, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J.
The claimants in O.P.No. 365 of 2003 on the file of the Motor Accident Claims Tribunal-cum-V Additional

District Judge, Nalgonda at Miryalguda filed this M.A.C.M.A., aggrieved by the dismissal of the O.P., through order, dated 03.10.2005.

2. The appellants filed the O.P. stating that their son, by name Shaik Masthan Ali, who was aged about 18 years and working as a tin maker,

boarded a lorry bearing No. ABK 9547 on 29.11.2002 along with his goods at Hyderabad, in order to go to his native village. The lorry is said to

have dashed against a stationed lorry bearing No. ATS 6257. It was alleged that the said lorry was parked by the side of National Highway No. 9

near Kaithapuram Village, with steel rods protruding outside, and that at about 2:00 a.m., when the lorry bearing No. ABK 9547 passed by its

side, the steel rods pierced into the cabin and their son died. They claimed a sum of Rs. 2,00,000/- as compensation, against the owner of the lorry

bearing No. ATS 6257, the first respondent, and its insurer, the second respondent. They alleged that no precautions were taken, while parking

the lorry on the part of the road, and that the steel rods have protruded towards the road side, in a negligent and dangerous manner.

3. The first respondent remained ex parte. The matter was contested by the second respondent alone. It was pleaded that the O.P. was not

maintainable, since the deceased was travelling as a passenger in a goods vehicle and that the owner or the insurer of the vehicle, in which he

travelled, were not made parties to the O.P. The Tribunal framed necessary issues and ultimately, through the order under appeal, it dismissed the

O.P., holding that the driver of the lorry, owned by the first respondent and insured with the second respondent, was not liable for the accident.

4. Smt. P. Lakshmi, the learned Counsel for the appellant submits that the Tribunal proceeded on certain notions contrary to law, in dismissing the

O.P. She contends that the accident took place only on account of the negligent manner, in which the lorry bearing No. ATS 6257 was parked

with steel rods protruding outside its body. She also contends that the appellants did not feel the necessity of impleading the owner of the lorry, in

which the deceased travelled, since the facts themselves revealed that there was no negligence on the part of its driver. She further contends that

the documentary evidence, in the form of charge sheet etc., coupled with the oral evidence clearly establishes that the accident occurred squarely

on account of the negligence on the part of the driver of the parked lorry.

5. The learned Standing Counsel for the second respondent-Insurance Company, on the other hand, submits that the deceased was a gratuitous

passenger in a goods vehicle and as such the O.P. was not maintainable. He further contends that in the First Information Report and other

documents, there is an allegation to the effect that the driver of the lorry, in which the deceased was travelling, lost control and thereby, the

accident took place.

6. The parents of late Shaik Masthan Ali, who died in the accident, filed the O.P. The deceased was travelling in a lorry bearing No.ABK 9547. It

was alleged that he was accompanying goods. The accident took place, when the said lorry was crossing a parked vehicle bearing No. ATS

6257, owned by the first respondent and insured with the second respondent. The steel rods protruding from the parked lorry are said to have

pierced into the cabin, resulting in the death of the deceased.

7. The second respondent-Insurance Company resisted the claim, on several grounds. It was alleged that the accident took place, on account of

the negligence on the part of the driver of the vehicle, in which the deceased was travelling and that the O.P. cannot be maintainable, without

impleading the owner of the said vehicle.

8. On behalf of the appellants, the second appellant was examined as P.W.1 and an eye-witness to the accident was examined as P.W.2. First

Information Report, Inquest Report and Post Mortem Report were filed as Exs.A.1 to A.3. On behalf of the respondents, the Divisional Manager

of the second respondent- Insurance Company deposed as R.W.1. The attested copy of the charge sheet and the copy of the insurance policy

were marked as Exs.B.1 and B.2 respectively.

9. P.W.2 categorically stated that the lorry bearing No. ATS 6257 was parked on the National Highway towards Vijayawada side and part of the

vehicle was on about 8 feet of the BT Road. He stated that the iron angles have protruded from the body of the parked vehicle and that the

accident took place, only on account of the negligence on the part of the driver of the said lorry. In the cross-examination, nothing was elicited

from him to discredit his version. In fact, the Tribunal also did not find anything objectionable in the evidence of P.W.2.

10. Ex.B.1 is an attested copy of the charge sheet. The concerned Police Officer observed that the investigation revealed that the accident

occurred, on account of the negligence, in the manner of parking the lorry bearing No. ATS 6257.

11. The Tribunal had undertaken most of its discussion, on the question as to why the appellants did not implead the owner of the lorry, in which

the deceased was travelling. According to it, failure of the appellants, in that regard, had handicapped it, from even adjudicating the question of

contributory negligence.

12. The relevant portion reads as under: ""The petitioners ought to have filed the present petition against the insurer and insured of the lorry bearing

No.ABK 9547 in which the deceased was travelling. Any contributory negligence on the part of the driver of the offending lorry, the same can be

decided when once the claim is made against the insurer and insured of the lorry bearing NO.ABK 9547.

13. Here, it is pertinent to mention that the failure of the appellants to implead the owner of the lorry, in which the deceased was travelling, or its

insurer, cannot by itself disable the Tribunal to decide the negligence, contributory or composite, in nature, on the part of the stationary vehicle,

whose owner and insurer are impleaded. In case, the evidence on record discloses that the driver of the other lorry was also guilty of contributory

negligence, the appellants would have rendered themselves incapable of realizing the compensation to that extent, either from the owner or insurer

of that lorry. So far as the right of the appellants to claim compensation vis-Ã¯Â¿Â½-vis the liability apportioned against the lorry of the first respondent,

there cannot be any impediment. Therefore, the refusal on the part of the Tribunal to decide the question of negligence, contributory or otherwise,

on the part of the driver of the parked vehicle, was without any basis.

14. It has already been indicated that the evidence of P.W.2 stood unrebutted and it was supported by the charge sheet filed in relation to the

accident, marked as Ex.B.1. Therefore, this Court is of the view that the driver of the parked vehicle bearing No. ATS 6257 was responsible for

the accident.

15. It was urged by the second respondent that the deceased was a gratuitous passenger in a goods vehicle and that the appellants were not

entitled to claim compensation. It needs to be observed that at the most, such plea would be available to the owner of vehicle, in which the

deceased was travelling, or its insurer. So far as the vehicle owned by the first respondent and insured with the second respondent is concerned,

the deceased is a third party. Hence, this contention cannot be accepted.

16. The Tribunal did not undertake any discussion, as to the quantum of compensation payable on account of the death of the deceased, obviously

because it answered the issue, on the question of negligence, in the negative. In the normal course, the matter were to have been remanded.

However, having regard to the fact that no technical evaluation is needed, and what is needed is only application of principles enunciated under the

Motor Vehicles Act, 1988 (for short "the Act") itself, this Court is of the view that it can be disposed of at this stage itself. The appellants, who are

bereaved and lost their sole bread winner, cannot be required to face another round of litigation.

17. The deceased was said to be a tin maker and that he was earning Rs. 3,000/- per month. However, there is no evidence to support that

contention. Even the wages payable to an unskilled labourer, at the relevant point of time, was Rs. 70/- to Rs. 80/- per day and around Rs.

2,000/- per month. It comes to Rs. 24,000/- per year and after deducting one-third towards personal expenses of the deceased, his contribution

to the family would be Rs. 18,000/- per year. Since the deceased was unmarried, the age of the younger of his parents needs to be taken into

account. The age of the second appellant, mother of the deceased, was 38 years. The relevant multiplier would be "16". Therefore, the

compensation would be Rs. 2,68,000/-. Schedule-II to the Act itself provides for award of Rs. 2,500/- towards loss of estate and Rs. 2,000/-

towards funeral expenses. Therefore, the total would be Rs. 2,72,500/-.

18. The M.A.C.M.A. is, accordingly, allowed and the appellants are awarded a sum of Rs. 2,72,500/- (Rupees Two Lakhs Seventy Two

Thousand Five Hundred Only) as compensation. The first and second appellants shall be entitled to Rs. 1,50,000/- and Rs. 1,22,500/-

respectively. Respondents 1 and 2 are held liable to pay compensation jointly and severally. The amount of compensation shall carry interest at the

rate of 7.5% per annum from the date of filing of the O.P.

19. From out of the compensation payable to the appellants, a sum of Rs. 1,00,000/- each shall be kept in a fixed deposit for a period of five

years, in a nationalized bank, and they shall be entitled to withdraw the balance as well as the accrued interest, without furnishing any security.

There shall be no order as to costs.