

(2006) 12 AP CK 0034

Andhra Pradesh High Court

Case No: Civil Miscellaneous Appeal No. 3332 of 1999

M.P. Gurivi Reddy

APPELLANT

Vs

Padisela Srinivasulu and Others

RESPONDENT

Date of Decision: Dec. 4, 2006

Acts Referred:

- Motor Vehicles Act, 1988 - Section 140, 166

Hon'ble Judges: C.Y. Somayajulu, J

Bench: Single Bench

Advocate: K.G. Krishna Murthy, for the Appellant; N.V. Jagannath and K.V. Subba Reddy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

C.Y. Somayajulu, J.

Respondents 1 to 3 filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 (the Act) seeking a compensation of Rs. 1,73,000/- from the appellant who is the owner of the tractor and respondents 4 and 5 who are the insurer and owner of the Alwyn Nissan van alleging that when Seshamma (the deceased) was travelling in the van, belonging to the fifth respondent, there was a collision between the van and the tractor belonging to the appellant resulting in the death of the deceased and injuries to some others. Fifth respondent chose to remain ex parte. Fourth filed its counter contesting the claim and contended that it is not liable to pay any compensation because the deceased was travelling as a passenger in a goods vehicle. Appellant filed his counter contending inter alia that the accident occurred only due to the rash and negligent driving of the driver of the van belonging to the fifth respondent, and as there was no fault on the part of his driver, he is not liable to pay any compensation.

2. In support of their case respondents 1 to 3 examined two witnesses as P.Ws.1 and 2 and marked Exs.A1 to A5. No oral or documentary evidence was adduced by the appellant. On behalf of the fourth respondent one witness was examined as R.W1 and Ex.B1 was marked. The Tribunal, holding that the accident occurred due to the rash and negligent driving of the drivers of both the vehicles involved in the accident, awarded Rs. 1,01,000/- as compensation in favour of respondents 1 to 3 against the appellant and the fifth respondent, with interest at 12% p.a. from the date of petition till the date of recovery including the compensation, if any, awarded u/s 140 of the Act and exempted fourth respondent from its liability to pay compensation. Aggrieved by the said award passed against him, the appellant, the owner of the tractor, preferred this appeal.

3. The contention of the learned Counsel for the appellant is that since respondents 1 to 3 had in the claim petition, clearly alleged that the accident occurred only due to the negligence of the driver of the van belonging to the fifth respondent, the Tribunal was in error in holding that the accident occurred due to the negligence on the part of the driver of the tractor belonging to the appellant also. It is his contention that since there is no evidence on record to show that the driver of the tractor of the appellant is responsible for the accident, and in view of the allegations in the claim petition, the Tribunal ought to have passed the award only against the fifth respondent but not against the appellant. It is also contended that the compensation awarded to the respondents 1 to 3 is on higher side. The contention of the learned Counsel for the fourth respondent is that since the deceased was travelling in a goods vehicle as a passenger, the Tribunal rightly dismissed the claim against fourth respondent. There is no representation on behalf of respondents 1 to 3 and fifth respondent.

4. No doubt in the body of the claim petition it is alleged that the driver of the van was driving the van at a high speed and dashed against the tractor coming from a by lane. But towards the end of para 26 it is stated that all the respondents in the OP i.e. appellant and respondents 4 and 5 are jointly and severally liable to pay compensation. The very fact that respondents 1 to 3 chose to implead the appellant also as a party to the claim petition and sought compensation from him also on the ground that he is also liable to pay compensation, shows that the case of the respondents 1 to 3 is that the accident occurred due to the negligence of the driver of the appellant also.

5. The evidence of P.W2, an eyewitness to the accident, is that when the lorry was proceeding at a high speed, a tractor came from the southern side, on to the main road, and both the vehicles collided resulting injuries to the deceased, herself and others, as all of them had fallen on the road due to the impact and as both the tractor and the van were being driven at a high speed. Significantly, she was not even cross examined by the appellant and was cross examined only by the counsel for the insurer of the van involved in the accident. Ex.A1, FIR issued in connection

with the accident, shows that the tractor came on to the road suddenly and dashed the van (lorry), the driver of the lorry swerved the lorry to the extreme right and then to left and in that process the lorry went off the road and turned turtle. Ex.A2, certified copy of the charge sheet, shows that the police, after investigation, filed a charge sheet against the driver of the tractor belonging to the appellant.

6. As rightly observed by the Tribunal, since there is a collision between the lorry going on the main road, and a tractor coming from a by lane to the main road, if any of the drivers of the vehicles involved in the accident were careful, they could have averted the accident. The driver of the tractor who was hitting the main road from a by lane should be cautious of the traffic on the main road before he tries to enter the main road from the by lane and should take all precautions to see that by his entry on to the main road would not cause obstruction to any vehicle proceeding on the main road. Similarly, the driver of the van (lorry) proceeding on the main road also should be careful at junctions when by lanes join the main road, because there is a possibility of vehicles coming from the by lane hitting the main road suddenly. The fact that the police charge sheeted the driver of the tractor of the appellant alleging that he drove the vehicle at a high speed and in a rash and negligent manner, coupled with the evidence of P.W2, clearly establishes that the drivers of both the vehicles involved in the accident were responsible for the accident, and so the Tribunal rightly held that the accident occurred due to the negligence of the drivers of both the vehicles involved in the accident. So I do not wish to interfere with the said finding of the Tribunal.

7. The Tribunal, on the basis that the deceased was aged about 40 years and was earning Rs. 50/- per day by doing cooli work, awarded Rs. 96,000/- towards pecuniary damages and Rs. 5,000/- towards transportation charges and other incidental expenses by applying the multiplier 12 as per the ratio in [Bhagwandas Vs. Mohd. Arif](#). The damages awarded by the Tribunal are just and reasonable.

8. The Tribunal did not award any compensation for loss of expectation of life, pain etc as per the ratio in [Y. Varalakshmi and Others Vs. M. Nageswara Rao and Others](#), which they, in fact, are entitled to. So the contention of the appellant that the compensation awarded is on higher side cannot be accepted.

9. Since respondents 1 to 3 did not prefer any cross objections or cross appeal seeking higher compensation I do not wish to interfere with the compensation awarded by the Tribunal.

10. So I find no merits in this appeal and hence the appeal is dismissed, but in the circumstances, without costs.