A.P.S.R.T.C.& ANR. A

v.

K. HEMALATHA & ORS.

(Civil Appeal Nos.3623-3626 of 2008)

MAY 16, 2008 B

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Motor Vehicles Act, 1988 – s.173:

Claim for compensation – 'Contributory Negligence' and 'Composite Negligence' – Parameters of – Discussed – Held: In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss of injuries, compensation is payable in respect of 'composite negligence' of the drivers of those vehicles – But in respect of such accident, if claim is by one of the drivers himself for personal injuries, or by legal heirs of one of the drivers for loss on account of his death, or by owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the 'composite negligence' of all the drivers, but about the 'contributory negligence' of the driver concerned – Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of negligence on his part but damages recoverable by him in respect of the injuries stands reduced in proportion to his 'contributory negligence' – Where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50. C D E F

A compensation claim was filed before the Accident Claims Tribunal. It was the case of the claimants that the deceased and injured claimant were proceeding on motorcycle when a bus came from back side and dashed the same. The claim was resisted by the Appellant-Corporation on the ground that the bus did not hit the motor- G

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A cycle and that on seeing the speeding bus, the deceased himself got puzzled and skidded off the road; as such, the deceased and claimant suffered injuries. It was the case of the Corporation that the bus of the Corporation did not hit the motor cycle at all; as such, there was no B negligence on the part of the driver of the bus of the Corporation, to claim compensation from it. The Tribunal held that there was contributory negligence and after making 1/3rd deduction therefor, awarded compensation together with interest at the rate of 12% p.a. The High Court however held that there was no contributory negligence and C partly allowed the appeal filed by the claimants while dismissing the appeal filed by the appellant-Corporation.

In appeals to this Court, the Appellant submitted that the High Court had misread the evidence on record. It was D contended that the Tribunal referred to the evidence on record to conclude that the deceased was also partially responsible for the accident and therefore there was contributory negligence, however, the proportion of 1:2 i.e. between the deceased and the Corporation, as fixed by E the Tribunal, was not correct. It was also contended that the rate of interest as awarded was extremely high.

Allowing the appeals, the Court

HELD:1.1. To determine the question as to who con- F tributed to the happening of the accident, it becomes relevant to ascertain who was driving his vehicle negligently and rashly and in case both were so doing who were more responsible for the accident and who of the two had the last opportunity to avoid the accident. In case the dam- G ages are to be apportioned, it must also be found that the plaintiff's fault was one of the causes of the damage and once that condition is fulfilled the damages have to be apportioned according to the apportioned share of the responsibility. If the negligence on the plaintiff's part has also contributed to damage this cannot be ignored in as- H

sessing the damages. He can be found guilty of contributory negligence if he ought to have foreseen that if he did not act as a reasonable, reasoned man, he might be hit himself and he must take into account the possibility of others being careless. [Para 7] [1207-F,G & H; 1208-A]

1.2. The Tribunal had noticed that the deceased was driving vehicle at a high speed with a view to attend the marriage function. Manner of the accident as deposed by the claimant's witnesses indicate that the deceased was partially responsible for the accident. The High Court was wrong in holding that the deceased had not contributed to the accident and there was no contributory negligence. Taking into account the evidence of the witnesses it can be certainly said that there was contributory negligence. The proportion can be fixed at 1:4. Considering the date of the accident, i.e. 19.3.1998, the rate of interest should be 8%. [Para 8] [1208-B,C & D]

1.3. In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss of injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned. [Para 9] [1208-D, E & F]

1.4. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers.

A In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer B separately, nor is it necessary for court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence C on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contribu- D tory negligence. [Para 10] [1208-9, H; 1209-A,B,C]

1.5. When two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence and the other driver denies E negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negli- F gence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory neg- G ligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error. The proportion in which the payment to the claimants have to be made shall be the same as was fixed by the Tribunal. [Paras 11, 13] [1209-D,E,F & G]

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T.O. Anthony v. Karvarnan & Ors. **2008(3) SCC 748 – relied on.** A

CIVIL APPELLATE JURISDICATION : Civil Appeal Nos. 3623-3626 of 2008

From the final Judgment and Order dated 28.10.2004 of the High Court of Judicature, Andhra Pradesh at Hyderabad in C.M.A. Nos. 2913, 2925 of 2000, 283 and 551 of 2001 B

R. Santhan Krishnan, Praveen K. Pandey and D. Mahesh Babu for the Appellants.

K. Maruthi Rao, K. Radha and Anjani Aiyagari for the Respondents. C

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted. D

2. Challenge in these appeals is to the judgment of a learned Single Judge of the Andhra Pradesh High Court disposing of several appeals filed under Section 173 of the Motor Vehicles Act, 1988 (in short the 'Act'). Appeals were filed by the claimants as well as the present appellant-Corporation and its E functionaries. By the impugned judgment the High Court partly allowed the appeal filed by the claimant while dismissing the appeal filed by the appellant-Corporation. One K. Lingam lost his life purportedly in a vehicle accident. His widow and the minor children claimed compensation. Similarly his widow Smt. F K. Hemlatha also claimed compensation for about Rs.8,00,000/- while the injured claimant in respect of the same accident claimed compensation of Rs.1,00,000/-. It was the case of the claimants that on 19.3.1998 the deceased and injured claimant in O.P. No.878 of 1998 were proceeding on motor bike bearing G No. AP.10J 5350 towards Yadagirigutta and when they reached the RTC bus depot at Yadagirigutta, bus bearing No. AP 9Z 3972 belong to APSRTC, came from back side and dashed the motorcycle. In the said accident, the deceased and claimant suffered grievous injuries. At first instance, both were ad- H

A mitted in Government Hospital, Bhongir and thereafter they were shifted to Gandhi Hospital, Secunderabad. Considering the serious condition of the deceased he was shifted to CDR Hospital, Hyderabad, where he succumbed to injuries on 24.3.1998. On a complaint lodged to the police, a case in Crime No.16 of B 1998 was registered on the file of the Police Station, Yadagirigutta. It was the further case of the claimants that the deceased was a Class-I contractor and was an income tax assessee and was doing high magnitude civil contracts. Pleading that due to sudden and untimely death of the deceased, C they lost dependency, they claimed compensation which included non-pecuniary damages on account of loss of estate, and loss of consortium. So far O.P. No. 878 of 1998 is concerned, the same was filed by the wife of the deceased who was also injured in the same accident, claiming compensation D on account of medical expenditure, pain and suffering and disability. The said claim was resisted by the appellant Andhra Pradesh State Road Transport Corporation (in short the 'Corporation') by filing counter affidavit before the Tribunal. It was the case and it was their specific case that the bus did not hit the motor bike. Further, it was their case that on seeing the E speeding bus the deceased himself got puzzled and skidded off the road; as such, the deceased and claimant suffered injuries. Precisely, it was the case of the Corporation that the bus of the Corporation did not hit the motor bike at all; as such, there was no negligence on the part of the driver of the bus of the F Corporation, to claim compensation from it.

3. The Tribunal in the two claim petition framed issues. After taking note of the evidence on record, it was held that the deceased was aged of 41 years, his earning was about G Rs.5,000/- per month and after deducting 1/3rd for personal expenses the contribution to the family was around Rs.3,400/- p.m. The annual contribution was Rs.40,800/. After applying multiplier of 11, compensation of Rs.4,48,800/- was awarded. Additionally, a sum of Rs.70,000/- for medical expenses, transportation charges, funeral expenses and the like was awarded. H

In other words in respect of claim for the death of the deceased Rs.5,18,800/- was fixed as the amount of compensation. But since the Tribunal held that there was contributory negligence, 1/3rd deduction was made. Interest at the rate of 12% was awarded, from the date of claim. In the petition in respect of injuries a sum of Rs.25,000/- was awarded but after making deduction of 1/3rd the amount was fixed as Rs.16,666/- together with interest at the rate of 12% per annum.

4. Both the claimants and the Corporation filed appeal. As noted above the appeal filed by the claimant was partially allowed while the appeal filed by the Corporation was dismissed. Primarily the High Court came to hold that there was no question of any contributory negligence.

5. In support of the appeal, learned counsel for the appellant submitted that the High Court has misread the evidence on record. The Tribunal has referred to the evidence on record to conclude that the deceased was also partially responsible for the accident and therefore it clearly held that there was contributory negligence. However, the proportion of 1:2 i.e. between the deceased and the Corporation, as fixed by the Tribunal, was not correct. It is also pointed out that the rate of interest as awarded is extremely high.

6. Learned counsel for the respondent on the other hand supported the judgment of the High Court.

7. To determine the question as to who contributed to the happening of the accident, it becomes relevant to ascertain who was driving his vehicle negligently and rashly and in case both were so doing who were more responsible for the accident and who of the two had the last opportunity to avoid the accident. In case the damages are to be apportioned, it must also be found that the plaintiff's fault was one of the causes of the damage and once that condition is fulfilled the damages have to be apportioned according to the apportioned share of the responsibility. If the negligence on the plaintiff's part has also contributed to damage this cannot be ignored in assessing the dam-

A ages. He can be found guilty of contributory negligence if he ought to have foreseen that if he did not act as a reasonable, reasoned man, he might be hit himself and he must take into account the possibility of others being careless.

B 8. The Tribunal has noticed that the deceased was driving vehicle at a high speed with a view to attend the marriage function. Manner of the accident as deposed by the claimant's witnesses indicate that the deceased was partially responsible for the accident. The High court was wrong in holding that the deceased had not contributed to the accident and there was no C contributory negligence. Taking into account the evidence of the witnesses it can be certainly said that there was contributory negligence. The proportion can be fixed at 1:4. From the compensation as awarded a sum of Rs.1,00,000/- with round figures needs to be deducted. Therefore, the compensation is fixed D at Rs.4,18,800/-. Considering the date of the accident, the rate of interest should be 8%.

9. In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, it is said that com- E pensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of F damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned.

10. 'Composite negligence' refers to the negligence on G the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of H the entire damages and the injured person has the choice of

proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

11. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.

12. The above position was highlighted in T.O. Anthony v. Karvarnan & Ors. [2008(3) SCC 748].

13. Appeals are allowed to the aforesaid extent. The proportion in which the payment to the claimants have to be made shall be the same as was fixed by the Tribunal.

B.B.B. Appeals allowed.