

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A. No.65 of 2010

ORDER :

The 3rd respondent to the claim petition is the appellant in the present appeal impugning the order dated 07.09.2009 in O.P. No.303 of 2006 on the file of the Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, East Godavari District at Rajahmundry.

2) For the sake of convenience the parties are arrayed herein as they are arrayed in the Tribunal. The 3rd respondent is the insurer of the tractor and trailer bearing Nos.AP 5V 381 and AP 5U 7743 belongs to the 2nd respondent driven by the 1st respondent. The other tractor bearing No.AP 5 AC 9587 belongs to the 5th respondent driven by the 4th respondent insured with the 6th respondent.

3) The claimants are wife, mother and two minor children of the deceased who is pillion rider is the bike which driven by P.W-3, who is an eye witness. P.W-3 reported the incident covered by Ex.A-1 F.I.R. The appellant/insurer claims that even the very F.I.R from report of P.W-3 vis-à-vis his evidence in chief-affidavit before the Tribunal clearly speaks that the 1st tractor belongs to the 2nd respondent driven by the 1st respondent of the claim petition coming on jig jag manner and the trailer portion touched the bike and fell down and at that moment, the other tractor coming i.e., driven by the 4th respondent ran over the deceased and crushed his head. Ex.P-2 is the post mortem report in proof of it not in dispute. However, the Tribunal stated from that evidence as the 1st tractor is deposed by P.W-3 is at fault i.e., of 2nd respondent driven by the 1st respondent of the claim petition made liable respondent Nos.1 to 3 by exonerating the other tractor which ran over the deceased from which he met with death instantaneously by his head crushed under the wheels, totally escaped from the liability. These facts are not dispute. Once that is the case, the cause of death that is the directly ran over by tractor

driven by the 4th respondent belongs to the 5th respondent insured with the 6th respondent supra, the Tribunal gravely erred in fixing liability only on the tractor of the 2nd respondent by exonerating the tractor of the 5th respondent. The factual matrix is suffice to say from the things itself speak of but for the fall under the wheels of the tractor of the 5th respondent, the deceased could not be ran over and died. Equally but for ran over by the tractor of 5th respondent from fall from dashed by the tractor of 2nd respondent driven by the 1st respondent, the deceased could not have been died suffice to say there is equal contribution by vehicles of both to say the both owners are liable to pay compensation to be indemnified by the owners equally at 50% each.

4) Accordingly as the parties are before the Court and even from the latest expression of the Apex Court in ***khenyei v. New India Assurance Company Limited*** born in mind can be decided though it is a different matter as in ***National Insurance Company Limited Vs. Swaran Singh & Others*** three Judge bench of the Apex Court categorically stated it is not only the third party claim against the driver, owner and insurer but also the liability *inter se* also has to be decided by the Tribunal equally of the vehicles involved more particularly from the wording of Section 168 of the M.V.Act.

5) In the result the compensation awarded by the Tribunal is to be apportioned with equal liability by respondent Nos.1 to 3 on one hand and respondent Nos.4 to 6 of the claim petition on the other hand. To that extent the appeal is allowed. Whatever paid more than 50% if any by the appellant, who is entitled to claim reimbursement from the 9th respondent herein i.e., 6th respondent in the claim petition. There shall be no order as to costs.

6) Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

19.11.2015

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