HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.3986 of 2004

JUDGMENT :

The appellant-insurance company, filed this appeal having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal–cum- District Judge, Medak at Sangareddy, (*for short, 'Tribunal')* in O.P.No.316 of 1998 dated 08.11.2002, awarding compensation of Rs.1,43,000/-(Rupees One lakh forty three thousand only) with interest at 9% per annum as against the claim of the claimant of Rs.1,50,000/-(Rupees One lakh Fifty thousand only), in the claim petition under Section 166 of the Motor Vehicle Act, 1988 *(for short, 'the Act')*.

2. Heard both sides. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3. The claimants are four in number, no other than wife, minor daughter and parents of the deceased Sailu, aged about 30 years as per Ex.A-4 post mortem report, maintained the claim against owner of the tractor, AP 25 D 6223 and owner of the trailer AP 23 T 2149 and insurer of the trailer United India Insurance Company covered by Ex.B-1 policy. The contentions in the grounds of appeal that the tribunal gravely erred in ignoring the factum of the tractor is not insured with 3rd respondent and very F.I.R, A-1 speaks the deceased and his wife were traveling on the tractor by side of the driver of the tractor and it is due to the dunken condition drove the tractor, they fell down and the deceased Sailu crushed under the wheels of the tractor and when there is no insurance and there is no propelling of the trailer to the tractor impleading of 2nd respondent and 3rd respondent owner of trailer and it is insurer and fixing of compensation against them is untenable, hence to exonerate the trailer, owner and insurer from liability. The learned counsel for the insurer reiterated the same.

4. Whereas, it is the contention of the learned counsel for the 2nd

respondent-owner of the tractor of the claim petition as 6th respondent of the appeal being the owner of the trailer that the tractor was propelled with trailer as also can be seen from evidence of P.W-2, eye witness and Ex.A-3 charge sheet contains after investigation by police in saying the trailer was propelled to the tractor and the accident occurred for crushing under wheels of the trailer propelled to the tractor and thereby the tribunal was right in fixing joint liability and there is nothing to exonerate the 3rd respondent-insurer. The learned counsel for the claimants, supported the said contention of the owner of the trailer who also claimed that he purchased subsequent to the accident by stepping into the shoes of the 1st respondent tractor-owner.

5. Now the points that arise for consideration in the appeal are:

1. *Whether the appellant-3rd respondent insurer of the trailer of 2nd respondent AP 23 T 2149 is liable for compensation and the trailer is involved in the accident and propelled to the tractor at the time of accident and from tractor undisputedly not covered by insurance coverage that belies to 1st respondent subsequent to the accident claim purchased by 2nd respondent to the claim and if so, the award of the Tribunal fixing the joint liability unsustainable and requires interference by this Court while sitting in appeal, with what observations?*

2. *To what result?*

POINT-1:

6. No doubt, a perusal of Ex.A-1 F.I.R shows the tractor given with number and involvement in the accident saying due to the drunk and drive of the driver of the tractor of the 1st respondent, the deceased and his wife who were on the tractor fell down and deceased was succumbed by crush under the wheels of the vehicle, the inquest panchanama, Ex.A-2 not also referring the trailer with registered number or the trailer propelled to the tractor. P.W-2 is the eye witness so also P.W-1 from Ex.P-1 report also to say from their evidence before the Court that the tractor was propelled to the trailer at the time of accident and deceased was crushed under the wheels of the trailer. Ex.A-3 charge sheet filed by police after investigation shows the trailer propelled to the tractor and due

to the rash and negligent driving of the driver of the tractor propelled with trailer, the accident occurred. Ex.A-4 is the post mortem report showing crush injuries. Ex.A-5 M.V.I report of examination two days after the examination mentions the tractor as well as the trailer. R.W-1 is the witness for the 3rd respondent insurer with reference to Ex.B-1 policy of the trailer by placing reliance, Ex.A-1 F.I.R and Ex.A-2 enclosed with the contentions in support of the cross-examinations of P.Ws 1 and 2 of the trailer is not involved and later implicated to claim and mulct to claim against the 3rd respondent and mulct the insurer for not tractor insured. In fact, neither F.I.R nor charge sheet are evidence before the Court but for what is the evidence adduced before the Court unless the F.I.R or charge sheet is form part of the claim petition averments from its exception as part of evidence to read as held by the Apex Court in ***N.I.C Ltd V. Savitri Devi***[1] and ***National Insurance Co. Ltd. V. Rattani***[2] ***.*** Here, the facts are not as such for F.I.R averments are not made part of the claim petition averments from its exhibition to read as evidence. P.W-2 is the eye witness to categorically deposed of the tractor propelled with the trailer. P.W-1 also deposes the same and she is also one of the persons sitting and traveling on the tractor at the time of accident as can also be seen from F.I.R. The material document is scene observation report and rough sketch to show if any trailer was there with the tractor propelled at the time of the accident. Those material documents are not seen light of day for reasons better known to the claimants. However, though that is one of the circumstances, that is not suffice to belie but for from the attending facts and other circumstances to decide what is or what could be the truth when it clearly shows the trailer of the tractor also was there propelled at the time of the accident involved from charge sheet and M.V.I. Report with other evidence on record of P.Ws 1 and 2, to say any inadvertence in the non-mention of the trailer with number and its existence as propelled to tractor in Ex.A-1 F.I.R that is not a ground to say, it was introduced by false implication muchless to mulct the insurer of the trailer with liability jointly with owner of the trailer from the tractor not injured.

Thus, when the conclusion rightly arrived by the tribunal, there is nothing to interfere to that extent.

7. However, the fact remains herein from the F.I.R and other material that the deceased was unauthorized passenger of the tractor even sitting on the tractor or trailer as the case may be, which makes no difference of goods vehicle with no seating capacity of the tractor and otherwise as coolie under the owner cannot even be covered, but for any contractual liability to sit and travel for unloading on the tractor under IMT 39 and 39A. Thus, the deceased was unauthorized passenger traveling on the tractor with trailer at the time of accident. Therefrom coming to whether the insurer of the trailer liable even the tractor propelled with the trailer for the deceased was unauthorized passenger of the tractor trailer before the accident while so traveling? Though he was unauthorized passenger while traveling, the accidental death occurred was not for mere fall while traveling, but for after fall for crush under the wheels of the vehicle tractor-trailer. It is to say the moment he fell down, he ceased to be the unauthorized passenger and became a third party and in the status of third party when he was crushed under the wheels, even Act policy covers the risk once the trailer also propelled to the tractor that run over. It is to say to that extent, the insurer can be made liable vide ***United India Insurance Company Limited V. Kurva Yejju Mallamma***[3]. Here the question of his meeting with death by fall from the tractor would not have been occurred but for his allowing and sitting and traveling as unauthorized passenger. It is to say including from the accidental death, outcome of his fall from the vehicle, there is negligence on whom and also of the driver and owner in taking as unauthorized passenger. Thus, in the factual matrix, the insurer's liability can be fixed with joint liability of the trailer of the 2nd respondent from Ex.A-1 covers the risk 50% and the remaining 50% on the part of the deceased as well as the driver and owner of the tractor and trailer. Coming to the 50% joint liability of trailer, owner and insurer concerned, what the Tribunal awarded out of the claim of Rs.1,50,000/- from the age of deceased about 30 years earning as a

coolie minimum taken Rs.3,000/- to be taken for 4 dependants, 1/4th to be deducted towards personal expenses in arriving multiplicand with the multiplier 17 or even 16.5, besides entitlement as per **Rajesh v. Rajbir Singh**[4] Rs.1,00,000/- consortium, Rs.25,000/- towards funereal expenses and Rs.10,000/- towards loss of estate and Rs.10,000/- towards care and guidance to the 2nd petitioner child; it is more than, what the tribunal awarded of Rs.1,43,000/-, but for no cross-objections to enhance vide **Ranjana Prakash V. Divisional Manager**[5]. However, coming to the rate of interest at 9% p.a. is unsustainable as per ***Rajesh*** (supra). Accordingly, Point-1 for consideration is answered.

POINT No.2:

8. In the result, the appeal is partly allowed by confirming the compensation as awarded by the Tribunal but by modifying and reducing the rate of interest at 9% p.a. from date of claim petition till date of appeal and from date of appeal at 7.5% till the date of realization. Rest of the terms of the award of the Tribunal holds good. There shall be no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date: 06-02-2015
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[1] (2013)11 SCC 554
[2] (2009)2 SCC 75
[3] 2007(3) ALT 366
[4] 2013(4)ALT 35(SC)
[5] 2011(8) SCALE 240