

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A Nos.2269, 2271 & 2316 of 2011

COMMON ORDER :

The insurance company who is the 3rd respondent in the claim petitions respectively O.P. Nos.465, 538 and 464 of 2008 is the appellant herein. The claim petitions filed by three injured claimants respectively against three persons i.e., owner of the motor cycle bearing No.AP 22 L 9666 with no insurance and owner and insurer of the passenger auto bearing No.AP 22 W 5232 of the claims were maintained under Section 166 of the Motor Vehicles Act with respect to claims and the Tribunal awarded without apportioning the liability by saying the motor bike vis-à-vis the auto driver are the joint tort feasures equally and responsibility over the accident, from the bike and auto were colluded on head. The claims were respectively allowed for the amounts.

2) The Tribunal no doubt observed in one of the findings in answering the contention of the insurer of the auto that insurer be exonerated from liability, in saying there is nothing to show conscious knowledge and deliberately instructed the driver by the owner to overload the auto with more than three passengers to make it a ground to exonerate. No doubt, that is not a tenable one. However, once the policy covered the risk, violating per se cannot be a ground for the insurer to be exonerated from the liability to indemnify. Law is fairly settled from the expression

B.V.Nagaraju V. Oriental Insurance Co. Ltd.^[1] in this regard. There are no other tenable grounds.

3) No doubt the latest expression three Judges bench of the Apex Court in ***Khenyei V. New India Assurance Co. Ltd.***^[2] observed referring to catena of expressions including with reference to Sections 166, 168 and 170 of the Motor Vehicles Act that it is left open to the claimants to maintain even joint tort feasures, to make the claim in entirety against some of the tort feasures and on that ground they cannot take shelter including for the insurance company from indemnifying but for later to contribute by satisfying the award by filing execution petition or application in the same proceeding, by following the analogy of ***Oriental Insurance Company Limited Vs. Nanjappan & Others***^[3]. It is observed it is open to the claimant where there are more than one vehicle involved even to proceed against some in respect of the one vehicle and by leaving by non-impleading the other vehicle even. Further, it is also says open to the claimant to implead even both the owners, drivers and insurers respectively of the both vehicles in the claim petition. It is stated even all are impleaded, the Tribunal can fix joint liability and the claimant can proceed to recover against any of them and after meeting the same, the others step into the shoes of claimant for recovery against others to contribute and apportion their interse liability among several. It is practically in saying, among several joint tort feasures,

even one can be made liable to satisfy the claim and after satisfying by stepping into the shoes of the claimant/deed holder to seek for recovery against the others. There is nothing in the expression saying more particularly when the Madhya Pradesh High Court Full Bench in ***Susheela Badoria V. M.P.S.R.T.C***^[4] expression speaks of apportionment even that was followed besides another of Karnataka Full bench judgment in ***K.S.R.T.C V. Arun***^[5]. Section 168 of the Act though not specifically referred in the Three Judge bench expression supra of the Apex Court, sub-section (1) itself specifies enabling the Tribunal to specify the person or persons to whom compensation to be made and in making the award specify the award it shall be paid by the insurer or the driver involved in the accident or by any of them as the case may be.

4) Even among the joint tort feasures, this provision specifically speaks of enabling the Tribunal to specify the liability. Once, such is the case, here the finding of the Tribunal is very clear from the head on collision of two vehicles, both at fault and no doubt as per the finding to upheld even for this Court, the mere overloading of the auto per se not suffice to say same alone contributed, but for negligence of the driver of the auto otherwise and equally of the bike rider. Apart from it, the F.I.R is registered and charge sheet filed against the rider of the bike, who faced the criminal prosecution. Thus, in the factual scenario there is

an equal contribution of 50% by the bike rider to make the owner of the bike responsible vicariously for the rider and equal contribution of 50% by the owner of auto for the driver, responsible for vicariously and to indemnify by the insurer of the auto respectively, for the bike owner and the auto owner and insurer are parties herein. No doubt, the defining of liability itself is not depriving the claimants to proceed against any of them but for in the event of payment to recover from the other by filing execution as laid down by the Three Judge Bench *supra* by following the guidelines of ***Nanjappa*** *supra*, without need to file separate proceeding by a separate claim.

5) Accordingly, these appeals are disposed of with the above observations by confirming the compensation. There shall be no order as costs.

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

Dr. B. SIVA SANKARA RAO, J

11.10.2015

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[1] 1996 ACJ-1178

[2] (2015)9 SCC 273

[3] (2004) 13 SCC 224=2004-SAR(civil)-290

[4] 2005(1) MPLJ 372

[5] AIR 2004 Kar.149