

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.1130 OF 2004

JUDGMENT:

The five claimants including two among them minors in O.P.No.549 of 1999 filed under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*) on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum–I Additional District Judge, Adilabad (*for short, 'Tribunal'*) for a claim of Rs.2,70,000/- (Rupees two lakhs seventy thousand only) for the death of the husband (Shivaji V.Kalluram) of the 2nd claimant (Vanoli Donda Bai) S/o 1st claimant (Vanoli Kalluram) and brother of 3rd claimant (Vimala Bai) and father of minor claimants 4 and 5 (Dayanand and Ashvini) against the driver, owner and Insurer of the lorry bearing No. KA 04-7588 which caused accident due to the rash and negligent driving of its driver on 25.03.1999 resulting death of the deceased, having been aggrieved by the Order/Award of the tribunal, dated 27.12.2003 dismissing the claim of the claimants, preferred this appeal with the contentions in the grounds of appeal that the tribunal erred in not granting compensation as prayed for though held that there is rash and negligent driving on the part of the driver of the lorry, that the tribunal erred in dismissing the claim without any valid reasons though there is no rebuttal evidence from the respondent to the oral and documentary evidence of the claimants that the deceased died due to the negligent driving of the driver of the crime lorry, that the tribunal erred in holding that the claim is dismissed for default against the respondents 1 and 2 automatically liable to be dismissed against the 3rd respondent-Insurer instead of granting compensation, hence, to set aside the award passed by the tribunal by allowing the appeal as prayed for.

2. Heard the learned counsel for the appellants-claimants as well as the contesting 3rd respondent-Insurer and perused the material on record.

3. A perusal of the record shows that notices were sent even as per the direction of the Court by the learned counsel for the claimants to the respondent Nos.1 and 2 and same were not served and pursuant to which substitute service ordered and it was not complied with. Once the claim petition is dismissed against the owner and driver for default therefrom trial Court held consequently no relief against the Insurer can be granted. It is important to note that insurance contract is a contract of indemnity to indemnify by the Insurer once the policy covers the risk of the third party-claimants who were the victims of the accidental death of their breadwinner. No doubt, the liability of the Insurer arises from the liability of the owner to indemnify. The Insurer did not adduce any evidence of the owner cannot be made liable much less driver for whose act vehicle's liability and consequential indemnity arises. Having regard to the above, the trial Court should have afforded some opportunity to the claimants having noticed even at the stage of passing of award and its pronouncement by reopening to take steps to serve the notice to respondent Nos. 1 and 2 by seeking restoration of the default dismissal against them as it is a beneficial legislation thereby the dismissal award of the trial Court is liable to be set aside.

4. In the result, the appeal is disposed of directing the tribunal to restore the O.P.No.549 of 1999 and permit the petitioners to file an application to restore the O.P.No.549 of 1999 dismissed for default against the respondent Nos.1 and 2(driver and owner) of the vehicle, subject to condition of claimants are not entitled to interest from the date of trial Court's dismissal of the award dated 27.12.2003 till today and therefrom give fresh disposal as expeditiously as possible. Even the Insurer cannot be made liable for interest from the date of trial Court's dismissal award till this day as it is the consequence of the fault of the claimants. There is no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 02-04-2015

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