

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.2724 of 2015

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JUDGMENT :

The 4th respondent in O.P.No.753 of 2004 on the file of the

II Additional District Judge-cum-Chairman, Motor Accident Claims Tribunal, Visakhapatnam, is the appellant herein.

The claim petition was filed by the three claimants against four respondents i.e., owner and insurer of the auto and owner and insurer of the lorry respectively. The appellant-The National Insurance Company Limited is insurer of the lorry bearing No.AP 16 TU 0490. The 2nd respondent to the claim petition-Oriental Insurance Company Limited is the insurer of the auto. There was collusion between the two vehicles i.e., lorry and the auto while proceeding in opposite direction and three inmates of the auto were died on the spot in that accident.

2. The claimants maintained the claim against the owners and insurers of the two vehicles in relation to one of the dead persons by name Narayana Murthy-husband of the 1st claimant and father of the 2nd and 3rd claimants, aged about 70 years (Ex.A.3-P.M. Report). The evidence on record in proof of the claimants of the respective contentions of the two vehicle owners and insurers is that PW.1-K.Ananda Rao-2nd claimant and PW.2-A.Lakshmana Rao-Police Constable, among RWs.1 to 4

of whom RW.1 is one M.Srinivas Rao, R.W.2- P.S.S.N. Raju on behalf of respective insurers, R.W.3 Y.Appa Rao i.e., owner of the auto and RW.4 one N.Saroja. The documents exhibited are Exs.A.1 to A.4. Ex.A.1 is F.I.R., Ex.A.2 is the motor vehicle inspector's report, Ex.A.3 is the post mortem certificate and Ex.A.4 is the copy of policy of the lorry, besides Exs.B.1 to B.4. Ex.B.1 is the licence of one of the drivers, by name Y.Dharma Rao, Ex.B.2 is the policy of the auto, Ex.B.3 is the deposition of B.Lakshmi in O.P.No.144 of 2004 and deposition of said B.Lakshmi in another claim in O.P.No.1349 of 2004. Undisputedly the said B.Lakshmi is not a witness to this case. A living person deposition on the another case unless it is brought within the purview of Section 33 of the Evidence Act, 1872, (for short, 'the Act') if not even under Section 32 of the Act cannot be given reliance, but for on confrontation by as a previous statement under Section 145 read 155(3) of the Act, thereby, much credence cannot be given to that. The evidence on record shows as observed by the Tribunal, three persons under the auto were died on the spot, which shows the impact of the accident. However, it is not the decisive factor to say the lorry alone at fault, but for both at fault. The Tribunal there from by not giving much credence to the evidence of PWs.1 and 2, fixed the liability at 50% saying both equally contributed. The evidence on record shows the auto is damaged and lorry was not put to inspection by the Motor

Vehicle Inspector. Even from reading of the elaborate discussion by the learned Judge in coming to the conclusion for this Court while sitting in appeal, there is practically nothing to interfere insofar as fixing the liability is concerned though otherwise it is not size of the vehicle, but the manner of accident. Here, there is no scene of observation report even exhibited. No doubt, the deposition of B.Lakshmi mainly says auto driver is solely at fault. However, as referred supra unless that B.Lakshmi comes to the witness box and drawn her attention to the said contentions, in the absence of which, it cannot be given credence to lead as part of the evidence with any weight by absolute credibility to her version from lack of opportunity to cross-examine by other side to test the veracity. Having regard to same, it is clear that there is nothing to interfere with the findings of the Tribunal for fixing 50% liability on the auto and its insurer vis-à-vis 50% on lorry and its owner even the compensation arrived of Rs.59,500/-, they are bound to pay accordingly.

3. Accordingly, the appeal is dismissed.

4. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

18th November 2015

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