

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No. 4322 of 2012

AND

M.A.C.M.A.No. 2694 of 2015

JUDGMENT :

The appellant is the insurer of the crime lorry bearing No.AP 12T 4586 belongs to the 4th respondent driven by the 3rd respondent. The claim petition was filed by the respondents 1 and 2 who are no other than the major brothers of the deceased by name Smt. T. Bodamma aged about 35 years. The claim petition in O.P.No.891 of 2010 filed by the said claimants under Section 163-A of M.V.Act for a compensation of Rs.1,50,000/- against the driver, owner and insurer of the crime lorry and the Tribunal after contest by award dated 25.08.2011 granted compensation of Rs.42,000/- with interest at 7.5% p.a. fixing joint liability on the insurer, owner and driver of the crime lorry. Aggrieved by the same, the insurer preferred the appeal.

2. It is the contention of the appellant that the claimants are no way dependents on the deceased lady and the driver has no valid driving licence and the fixing of liability for any amount on the insurer by the Tribunal is unsustainable and liable to be set aside. It is also the contention that the driver was under intoxication condition even as per the charge sheet and thereby also the insurer cannot be made liable.

3. Whereas it is the contention of the counsel for the claimants that but for no cross objections, what the amount awarded by the Tribunal is utterly low and sought for dismissal of the appeal.

4. As there is a delay of 223 days in filing the appeal, the insurer filed MACMAMP No.4322 of 2012. The delay is condoned directing the registry to number the appeal if it is otherwise in order, as the reason assigned is the administrative delay in filing the appeal, giving opinion and according sanction.

5. It is the submission of both the counsel that the driver and owner of the crime lorry remained exparte before the Tribunal and they are impleaded in the appeal as respondents 3 and 4 and as notice was

not taken against them, the appeal against them was dismissed for default on 03.03.2015 which is no way fatal vide ***M.Chakra Rao Vs. Y.Babu Rao***. By recording the same, heard and perused.

6. But for charge sheet showing that the driver was charged under M.V.Act offences, there is no evidence placed by the insurer much less through any of its employee or calling for RTA record to show that the driver has no valid licence and there is no evidence to show the intoxicated condition of the driver if any attributed to the accident and even therefrom once policy covered the risk, the insurer cannot be exonerated and there is nothing to show that the deceased attributed to the accident. No doubt, the claimants, who are major brothers of the deceased lady, are no way dependents, but for being the only Class-II legal heirs, Court to take therefrom any contribution to them by the deceased. Even to consider that what the Tribunal awarded is just or not, there are no cross objections or independent appeal by the claimants. But for that, there are no merits even in the appeal filed by the insurer.

7. Accordingly, the appeal is dismissed. No costs. Consequently, miscellaneous petitions, if any pending in this appeal shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

2nd December, 2015

cbs

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