HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.2803 OF 2015

JUDGMENT:

The appellants, who are claimants filed this appeal having been aggrieved by the Order/Award of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Guntur, (*for short, 'Tribunal')* in M.V.O.P.No.323 of 2008 dated 04.12.2009 against the owners and insurers of the ambasedor car of 1st respondent insured with 2nd respondent and lorry of 3rd respondent insured with 4th respondent. The claim petition filed under Sections 163-A and 166 of M.V Act for Rs.30,00,000/- for the death of deceased by name Chava Chandra Sekhar in a road accident, for which the Tribunal awarded compensation of Rs.18,39,586/-(Rupees Eighteen Lakhs thirty nine thousand five hundred eighty six only) with interest at 7.5% per annum only against respondent No.1 without fixing any joint liability against respondents 2 to 4. It is the contention of the appellant in impugning the award of the Tribunal that, the Tribunal gravely erred in not properly considering the policy even it covered the risk and in subsistence and hence to set aside the award passed by the Tribunal and fix joint liability against the respondents.

2) Heard learned counsel for the appellants/ claimants and also counsel for 2nd respondent—insurer vis-à-vis 4th respondent—insurer. Though notice served to respondents 1 and 3 being the owners of crime vehicles respectively, failed to attend and respondent No.3 remained ex parte even before the Tribunal, hence taken as heard. Perused the material on record;

3) The brief averments of the claim petition are that, the deceased Chava Chandra Sekhar and his colleagues were planning to go to Srisailam. On 01.12.2007, they started from Guntur in Ambassadar Car and when they reached Sai Baba Temple, Cheekateegalapalem on Markapuram—Vinukonda, the lorry bearing

No.AP 16V 4327 was stationed on road without observing any precautions and traffic rules, the driver of the car dashed the stationed lorry, as a result, the inmates of the car received injuries and the deceased Chandra Sekhar died on the spot, who was husband of 1st petitioner, father of petitioners 2 and 3 (petitioner No.3 died) and son of 4th petitioner.

4) The 1st respondent—owner of the ambasedor car filed the counter denying the claim and by saying since the car is insured with 2nd respondent—insurer, the United India Insurance Company Limited, rep. by its Divisional Manager, of Guntur Division, the insurer is liable to pay the compensation. The 2nd respondent—insurer filed counter stating that the liability is subject to proof of valid policy of insurance besides other contention that the driver was not having valid driving licence. The 2nd respondent filed additional counter contending that the 1st respondent obtained policy only for his private use of the car from the 2nd respondent and it is permitted to be used only as a private car and not for a public use much less as taxi to cover the risk of inmates and that at the time of accident as the car was in use as taxi hired by the deceased and his colleagues, which is not in use for the insured's private purposes, there is no policy coverage of the risk and thus the 2nd respondent—Insurance company cannot be made liable.

5) The 3rd respondent owner of the stationed lorry remained ex parte before the Tribunal and the 4th respondent insurer of the stationed lorry, filed counter stating that the accident occurred due to negligence of the driver of the car without observing the stationed and parked lorry on the road margin shown with blinking lights and thereby there is no negligence on the part of the stationed lorry and neither respondent No.3 nor its insurer—respondent No.4 are liable to pay any claim. It is therefrom, after enquiry from the evidence of PWs.1 to 3, RWs.1 to 4 and Exs.A1 to A5, Ex.X1 to X5 and Exs.B1 to B3, the

Tribunal held that there is no fault of the lorry driver and accident was occurred due to sheer negligence of car driver, in which the deceased was travelling, in dashing the stationed lorry and the permit is only for private use and the policy issued is also for private use of owner and thereby it is only the liability of respondent No.1—owner of the car. The same, now impugned in the appeal. However, there is nothing to mulk the 3rd respondent—owner of lorry or its insurer 4th respondent for no any negligence on the part of the lorry driver for the stationed lorry was with blinking lights as per the defence evidence of record of DWs.1 to 4, particularly from Ex.B3 rough sketch.

6) Even coming to the liability of respondent No.2—insurer of the car concerned, it is undisputedly, the permit is for own use and even to take any persons as inmates the policy covered by Ex.B1 is only the Act policy does not even a standard package policy as per Insurance Regulations of 2009 to make the insurer liable to indemnify even to the inmates of the own use car.

7) Having regard to the above, for this Court while sitting in appeal, there is nothing to interfere with the findings of the Tribunal. Accordingly, the appeal is dismissed. No order as to costs.

8) Consequently, miscellaneous petitions if any pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:13-11-2015
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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