

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.M.P.No.491 of 2010

IN/AND

M.A.C.M.A.No.2916 of 2015

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COMMON ORDER :

The insurer-respondent Nos.3 and 4 filed this appeal impugning the award dated 12.08.2009 in O.P.No.519 of 2008 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge (III F.T.C.), Warangal at Mahabubabad (for short, 'the Tribunal') along with the delay condonation petition with the explanation of administrative delay. The claim petition maintained by five claimants, no other than the wife, major sons and major unmarried daughters respectively of the deceased M.Jaggaiah, aged about 65 years, under Section 166 of the Motor Vehicles Act (for short, 'the Act') for Rs.2,00,000/- against respondent Nos.1 and 2-driver, owner of the tractor and trailer bearing Nos.AP 20 T 593 and 594 and insurer i.e., appellants herein and the Tribunal fixed joint liability by awarding compensation of Rs.99,000/- with interest at 7.5% per annum.

2. For the sake of convenience, the parties hereinafter referred to as they are arrayed before the Tribunal.

3. The contentions in the grounds of appeal are that the Tribunal gravely erred in ignoring the evidence of RWs.2 and 3, no other than the owner and driver, i.e., respondent Nos.2 and 1 of the claim petition, besides that

of RW.1 employee of the insurer, by coming to the witnesses box of very involvement of the vehicles disputed so also driving of the vehicle and Tribunal gravely erred in relying upon Ex.A.2 charge sheet and evidence of PW.2-so-called eye witness instead of dismissing the claim as out come of false implication by claimants and hence to set aside the award fixing the liability on the insurer, if not also against the owner and driver by dismissing the claim.

4. Heard arguments for claimant Nos.1 to 5. Respondent No.1-driver even served failed to attend and appeal against respondent No.2 is dismissed though contested before the trial Court for non payment of batta.

5. Perused the record. The delay of 57 days is condoned and M.A.C.M.A.M.P.No.491 of 2010 is allowed accordingly. At request of both parties, this appeal is taken up for hearing.

6. No doubt, the insurer adduced the best evidence available of the owner and driver by examination, who are respondent Nos.2 and 1 respectively in the claim petition. Respondent No.1-owner remained ex parte and filed counter saying there is no negligent driving of its driver of the tractor involved in the accident same is covered by insurance, hence to dismiss and the contest of the Insurance Company-respondent Nos.3 and 4 of the claim petition is no doubt the police allegedly lodged by table investigation on the driver of the vehicle and he has no

valid driving licence and compensation is excessive. In the light of the pleadings, the Court ought to appreciate the evidence on record supra and the driver and owner i.e., RWs.2 and 3, vis-à-vis, PW.2 is an eye witness to the accident and police filing final report charging the respondent No.1 as driver of the vehicle which is involved in the accident. There is nothing to say against the police of false implication not even a case of F.I.R. not mentioned the vehicle, much less, belated and after thought, apart from it eye witness figured in the charge sheet deposed saying vehicle involved, the Court in weighing the evidence could not believe credibility of RWs.2 and 3 particularly RW.3 driver and thereby for this Court while sitting in appeal against the reasoned finding of the Tribunal also from the driver having valid driving licence under Ex.A.6, even it is shown merely because another view possible nothing to interfere.

7. Accordingly and in the result, the appeal is dismissed.

8. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

31st December 2015.

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