

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.Nos.559 AND 599 OF 2008

COMMON JUDGMENT:

The 2nd respondent-Insurer of the Lorry bearing No.AP 07 T 3708 including the employer of the driver of the lorry and Insurer of the jeep in both the claim petitions viz; O.P.No.438 and 439 of 2004, on the file of the learned Chairman of the Motor Accidents Claims Tribunal-cum-V Addl. District & Sessions Judge, Tirupati at Chittoor (*for short, 'Tribunal'*), filed u/ s. 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*), filed by the sole claimant no other than the mother of the two respective deceased persons who is owner of the jeep bearing No.AP 3 V 5668 for a claim in MVOP No.439 of 2004 of Rs.6,00,000/- and in MVOP No.438 of 2004 of 9,90,000/- respectively, for the death caused by the rash and negligent driving of the driver of the crime lorry belongs to the claim petition 1st respondent insured with the claim petition 2nd respondent, from the contest held that the accident was the result of the rash and negligent driving of the driver of the jeep no other than one of the deceased persons (one was driving and the other was traveling) but for no fault of the driver of the lorry and held that both the vehicles while proceeding in opposite direction equally contributed to the accident and from their composite negligence apportioned liability among the respective owners and Insurers of 50%each so far as the claim is concerned, awarded compensation of Rs.1,56,000/- in each claim petition with interest at 7.5% p.a. vide common award dated 29.09.2007; by impugning the said liability as unsustainable for no fault of the driver of the lorry from the evidence on record, preferred the present appeals.

2. Whereas, it is the contention of the learned counsel for the claimant vis a vis the Insurer of the jeep that the award of the tribunal holds good and for this Court while sitting in appeal there is nothing to interfere with the award of the tribunal.

3. Heard and perused the material on record.

4. The facts show, irrespective of the registration of FIR against the driver of the jeep belongs to the claimant in which the deceased persons were traveling, that the jeep and the lorry were proceeding in opposite direction and there was head on collision and even jeep is smaller in size with that of the lorry even. No scene observation report even filed and there is no evidence as to width of the road and the manner of the accident to come to a different conclusion much less to exonerate the Insurer of the lorry, the appellant herein. When the tribunal having believed from the evidence including of the eye witnesses P.Ws. 2 and 3 came to the conclusion with reference to the First Information Report and Post mortem report and rightly held that the accident was outcome from the contribution by drivers of both the vehicles, there is nothing to interfere including on the quantum and rate of interest but for no cross-objections to enhance.

5. In the result, both the appeals are dismissed. There is no order as to costs. Miscellaneous petitions, if any pending in these appeals, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 19.09.2016
Vvr