

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.656 OF 2008

JUDGMENT:

The injured claimant maintained the claim against the owner and insurer of the lorry bearing No.AP 16 TT 3582 u/s.163-A of the Motor Vehicle Act,1988 (*for short, 'the Act'*) on the file of the learned Chairman of the Motor Accidents Claims Tribunal-cum-I Addl. District Judge (*for short, 'Tribunal'*), for compensation of Rs.2,20,000/- for the injuries sustained in the motor accident dated 12.08.2005, while she was travelling with the 7 bags of cheeni fruits in the lorry of the 1st respondent insured with the 2nd respondent, caused due to rash and negligent driving of its driver, undergone treatment in Government hospital, Ongole and Guntur. The tribunal after contest by holding that saying there is a 40%disability as per the Ex.A.5 deposed by the P.W.3 though 35%disability as per the evidence of P.W.2 and by negating the claim of the Insurer of non-liability in saying the injured was travelling as owner of goods, granted Rs.1,10,000/- with interest at 7.5%p.m. against both the respondents. The claimant preferred the present appeal, said quantum as utterly low and is to be enhanced as prayed for.

2. The learned counsel for the claimant reiterated the same during the course of hearing. The 2nd respondent-Insurer (from the 1st respondent remained exparte before the tribunal, even impleaded in the appeal, not taken as heard), submits that there is no liability for injured is an unauthorized passenger, but for no appeal and thus there is nothing to interfere with the award of the tribunal to make liable further the Insurer.

3. In fact, as it is a load lorry, to claim as owner of goods there is only one person entitled to travel, the petitioner is not even owner of

goods, even there is no other person with such claim when she is only a midway passenger on the load lorry with any cheeni fruit bags and tribunal in fact went wrong as contended by the learned counsel for the Insurer in fixing liability on the Insurer however there are no cross-objections thereby to the extent of the joint liability, fixed by the tribunal became final for nothing to modify however so far as the quantum concerned any enhancement is not against the insurer from basically no liability but for against the owner. Needless to say for what is the joint liability the Insurer has to pay for no any appeal preferred but for to recover from the owner. So far as any additional entitlement that is only against the owner of the vehicle concerned, from the 35% disability, from the age of the injured even taken the earnings at Rs.3,300/- p.m. as on the date of the accident, the claim of Rs.2,20,000/- as prayed for with interest at 7.5%p.a. is to be held as just and reasonable.

4. Accordingly and in the result, the appeal is allowed in part by enhancing the compensation of Rs.1,10,000/- granted by the tribunal to Rs.2,20,000/- as prayed for by confirming the rate of interest and joint liability, however the joint liability of the Insurer fixed by the tribunal for that Rs.1,10,000/- with interest is modified for not preferring any appeal by the Insurer to that extent, since cause made final as pay and recovery liability. For rest of amount, the Insurer held not liable. The appellant-claimant is therefore entitled to recover from the owner of the vehicle alone for the enhanced amount of Rs.1,10,000/- with interest. No costs. Consequently, pending miscellaneous petitions, if any, in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 19.09.2016
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