

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CMA No.2349 OF 2004

JUDGMENT:

The 2nd respondent-Insurer of the claim petition O.P.No.180 of 1997 on the file of the learned Chairman, Motor Accidents Claims Tribunal–cum-Addl.District Judge, Anantapur district, (*for short, 'Tribunal'*), maintained by the claimants, no other than the parents of the deceased boy aged about 14 years as per the Ex.A.2 inquest report met with accident dated 02.12.1996, maintained the claim u/s.166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), against the owner of the tractor and trailer bearing No.AP02 D 0550 and its Insurer for his death in the accident while the deceased boy among others were travelling with a load of stones on the tractor and trailer for unloading, due to rash and negligent driving of its driver from the tractor and trailer turned turtle and fell on him, preferred the present appeal aggrieved by the award of the tribunal dated 27.12.2013, granting compensation of Rs.64,000/- out of Rs.2,00,000/- with interest at 9% p.a. fixing liability against him including the owner of the crime vehicle, with the contentions in the grounds of appeal that the tribunal ought to have seen that the deceased was traveling as a passenger in the crime vehicle as unauthorized passenger which is clear violation of the terms and conditions of the policy by the R.1-owner of the crime vehicle thereby the insurer is not liable to pay compensation, hence to exonerate him from liability.

2. Heard and perused the material on record.

3. The postmortem report is not exhibited by both sides for the reasons best known but for the inquest report Ex.A.2 also speaks the facts supra besides the First Information Report filed by the police covered by Ex.A.1. It is the contention of the Insurer(R.2) before the tribunal for the owner remained *ex parte*, that the deceased was unauthorized passenger of the goods vehicle and it is hardly

believable as he was working as cooli when aged only 14 years, thereby all the persons were unauthorized passengers but the tribunal held that the deceased was, as can be seen from the evidence proved, working as cooli along with others for loading and unloading with the load of stones and proceeding for unloading on the trailer. A perusal of the Insurance policy Ex.B.1 covers under IMT 17 by then risk for 6 coolies including for loading and unloading. Thus the policy covers the risk, even taken for the argument sake that the deceased was hardly 14 years not believable of travelling as a cooli to cover by the policy but for unauthorized passenger as the manner of accident clearly speaks the death was not result of travelling as unauthorized passenger but after the tractor and trailer turned turtle and fell on the deceased he became unauthorized passenger which itself is a third party. From that even for the unauthorized travelling, there is contribution by the deceased also for 40% and the Insurer cannot escape from its liability for the moment he fell down he became a third party. In fact, what the tribunal awarded is of Rs.64,000/- with interest at 9%p.a. with joint liability. Having regard to the above, but for no cross-objections to enhance compensation even there is nothing to interfere with the award of the tribunal.

4. In the result, the appeal is dismissed. There is no order as to costs in the appeal. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:24.06.2016

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