

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A. No.551 of 2010

JUDGMENT :

The injured/claimant, who maintained O.P.No.237 of 2009 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-II-Additional District Judge, Guntur (for short, 'the Tribunal'), under Section 163-A of Motor Vehicles Act, for a compensation of Rs.4,00,000/- against the owner and insurer of tractor bearing No.AP 21 D 3898, since held that the claimant is entitled to Rs.79,000/- with interest at 7.5% p.a. vide award dated 04.01.2010 by exonerating the 2nd respondent-Insurance Company as there is no endorsement to drive the tractor though the evidence of RW.1 and Ex.B.4 driving licence particulars shows the driver got LMV non-transport and also transport driving licence, present appeal is preferred as the compensation awarded by the Tribunal is utterly low.

2. Learned counsel for the petitioner reiterated the same in the course of hearing.

3. Whereas, it is the submission of learned counsel for the 2nd respondent-insurer that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere and that there is no endorsement showing that the driver is competent to drive the tractor in question. Apart from the 1st respondent did not choose to appear and contribution of the injured not properly considered by the Tribunal.

4. Heard and perused the material on record.
5. Now coming to the exoneration of the Insurance Company is concerned, from the very evidence of RW.1 with reference to Ex.B.4 shows the driver got LMV non-transport and also heavy transport vehicle licence and the endorsement made is competent to drive the vehicle, which is tractor in question and there is no imperfect or invalid licence and once the policy covers the risk including from the evidence of RW.1. Exonerating the Insurance Company from its liability as held by the Tribunal is unsustainable.
6. Now coming to the quantum of compensation, the manner of accident from the claim petition is that the claimant and his friend Ravi @ Yogeswara Rao attended the marriage function and while returning on the motor cycle bearing No.AP 27 H 3815 at Donakonda, the tractor coming in high speed, hit the motor cycle, as a result, Ravi died on the spot and he sustained multiple injuries. Thus, the claimant is the eye witness to the accident and the accident took place at cross roads at four roads junction near Ambedkar statute as per the evidence on record and he was the pillion rider and the tractor was coming in opposite direction. The claimant deposed that the accident took place while motor cycle was taking turning at the junction and he did not report the accident to the police and father of the deceased reported that accident. It clearly shows contribution by the deceased as bike rider. The motor cycle owner and insurer not even impleaded though the rider died in the accident. The Tribunal did not properly advert to

these aspects in saying the accident was the sheer negligence of the tractor driver. In fact, contributory negligence depends upon several factors like size of the vehicles, size of the road, condition of the road, condition of the vehicles at the time of accident and from its lying on the road as to which one if any in wrong side for that the scene of observation is also one of the important documents. From the above and coming to facts of the case supra, it can be fixed 25% contribution by the deceased and to that extent, the claimant has to proceed against the bike owner and insurer. However, once the liability fixed jointly, because of non-impleadment of necessary party, the claim cannot be dismissed, but for enable the party to pay and recover for the contribution by filing execution petition as per Three Judge Bench expression in **Khenyei v. New India Assurance Company Limited and others**¹.

7. From the above, now coming to the quantum, there is nothing to show that the injured is suffering from any permanent disability either from the wound certificate or claim petition averments. The only thing to be considered is for the three fractures with another grievous and three simple injuries, what the compensation the claimant entitled to is Rs.60,000/- for the three grievous injuries, Rs.10,000/- for other simple injuries and Rs.6,000/- for medical expenses even the treatment is covered under Arogya Sri, from the evidence of PW.2. Ex.C.1 also clearly proves the same. Apart from that the claimant is entitled for an amount of Rs.9,000/- towards loss

¹ 2015 (9) SCC 273

of earning, attendant and transport charges and extra nourishment. Thus, the claimant is entitled to Rs.85,000/-, which is the just compensation, out of which the bike/motor cycle owner and insurer are liable for 25%, respondents 1 and 2 are liable for 75%. Thereby, it is also left open to the 2nd respondent-insurer by indemnifying the owner and insurer of motor cycle, if any, and their impleadment is no way fatal to the maintainability of the claim as laid down in Khenyei supra.

8. Accordingly and in the result, the appeal is allowed in part by enhancing the compensation from Rs.79,000/- to Rs.85,000/- and while setting aside the liability fixed by the Tribunal, respondents 1 and 2 are liable to 75% and the owner and insurer of motor cycle are liable to 25%. Thereby, on payment by the respondents 1 and 2, they can recover 25% liability of the owner and insurer of the motor cycle by filing execution petition in the same proceedings as per the expression of the Apex Court in Khenyei supra.

9. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

28th November 2016.

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