

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.430 of 2010

JUDGMENT:

The 2nd respondent insurer among the two respondents including the owner of the auto bearing No.AP-25-U-4945, impugning the award of the Tribunal dated 01.04.2008 in O.P.No.628 of 2005 on the file of I Additional Motor Accidents Claims Tribunal, Nizamabad, maintained the appeal.

The contentions in the grounds of appeal mainly are that the lower Court ought to have seen that the petitioner is an unauthorized passenger as 6 persons including the driver of the auto were traveling against the seating capacity of 3+1, for the injury claims maintained in O.P.Nos.925 to 928 of 2005 including the present claim, for 3 claims already satisfied by the insurer, thereby to exonerate the insurer from liability. The learned counsel for the appellant insurer reiterated the same. Whereas it is the submission of the 1st respondent/claimant that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere in fixing joint liability.

Heard and perused the material on record. The 2nd respondent to the appeal (1st respondent to the claim petition) remained exparte before the Tribunal did not choose to appear, hence taken as heard.

No doubt, the Apex Court expression in **National Insurance Company Limited Vs. Anjana Shyam**¹ where the claims are more than the capacity and policy coverage of risk, the insurer made

¹ (2007) 7 SCC 445

liable to the highest claims to the extent of maximum liability to apportion and rest of the claims, the owner made liable between the claimants of all claims in proportion to the highest claim fixing joint liability including to the maximum and other claims fixing liability against the owner exonerating the insurer. Hence, the insurer has to pay and recover from the owner.

Accordingly and in the result, the appeal is partly allowed by modifying the joint liability into pay and recovery. However, in case of recovery for the 4 claims satisfied including the present one, the insurer to recover the lowest of the 4 claims and not the present one.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 29.11.2016
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