HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.645 OF 2010

JUDGMENT:

The injured claimant maintained O.P. No.832 of 2008 on the file of Motor Accidents Claims Tribunal–cum–IV Additional District Judge, Guntur (fort short 'the Tribunal) under Section 163-A of Motor Vehicles Act, 1988 (for short 'M.V Act') for a compensation of Rs.2,00,000/- against owner and insurer of lorry bearing No.ABK 4416, for the injuries sustained in the motor accident dated 18.05.2008 with averments that on 18.05.2008 when the claimant was walking on the road margin and reached near Nemallapudi, the lorry of 1st respondent bearing No.ABK 4416 came in a rash and negligent manner at high speed and dashed the petitioner from behind, as a result he sustained grievous injuries viz., fracture to the right leg clavicle bone and head, in addition to other injuries all over the body. After contest of 2nd respondent—insurer for 1st respondent—owner remained *ex parte*, from the evidence on record of PWs.1 and 2 coupled with Exs.A1 to A9, Ex.X1 to X3, the Tribunal dismissed the claim against the insurer and awarded compensation of Rs.2,00,000/- with interest at 7.5% per annum against owner. Impugning the same, the injured claimant maintained the present appeal.

2) The contentions in the grounds of appeal vis-à-vis oral submissions made by the learned counsel for appellant—claimant that the Tribunal ought to have considered the fact that once the policy covers the risk, the owner of the vehicle is liable to be compensated in awarding compensation equally against the insurer to indemnify and committed wrong in exempting the insurer despite not a case of no risk coverage by the policy and thereby, the award of the Tribunal is liable to

be set-aside and to the extent of exonerating the insurer and the insurer may be liable to pay compensation.

3) Whereas it is the submission of the learned counsel for insurer that the award of the Tribunal holds good and the insurer has no objection if the owner wants to take risk and insurer has rightly been exempted from the finding that there is a collusion between owner and claimant and under the guise of doctrine of indemnity.

4) Heard and perused the material on record.

5) The Tribunal has meticulously analysed the evidence of the claimants including from cross examination of PWs.1 and 2, Exs.X1 to X3, Exs.A1 to A5 in particular and came to the right conclusion saying that Ex.A4—O.P. Chit shows that at about 12.30 am on 19.05.2008, the injured was got admitted in casual ward of the Government Hospital, Guntur. Whereas in the discharge slip attached to Ex.X1, the date of admission is noted as 16.05.2008 and treated and discharged on 17.06.2008. How the petitioner got admitted into the hospital on 16.05.2008 by 9.30 pm, if at all the accident was occurred on 18.05.2008 is a mistery and it is outcome of collusion with reference to the record in saying vehicle is falsely implicated to make the insurer liable. If such is the case, for this Court while sitting in appeal there is nothing to interfere much less to mulk the insurer with any liability.

6) According and in the result, the appeal is dismissed. No order as to costs.

7) Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.08.12.2016
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