

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.90 OF 2016

JUDGMENT:

The claimants no other than the parents of the deceased Srikanth aged about 14/15 at the time of the accident as per Ex.A.2 post mortem report, maintained the claim under Section 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*) in O.P.No.21 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal–cum-IV Additional District Judge(FTC), Anantapur, (*for short, 'the Tribunal'*), for compensation of Rs.1,50,000/- against the 4 respondents i.e. owner and insurer of the lorry bearing No.AAA 8965 in which the deceased and the persons about 50 in number were traveling as marriage party and owner and insurer of opposite lorry bearing No.AP12-T-0598 stating that there is a head on collision by both the vehicles proceeding in opposite direction and as a result of which from the collision of the two vehicles, the persons traveling in the lorry of 1st respondent including the deceased sustained injuries and he was succumbed to injuries and in the tribunal but for the two Insurers of the two vehicles supra, the owners R.1 and R.3 remained exparte and the tribunal by its award dated on 06.09.2007 held fixing liability on the 1st respondent by awarding compensation of Rs.1,52,500/- by exonerating the respondents 3 and 4 and also the 2nd respondent- Insurer of the lorry of 1st respondent in which they were traveling on the ground that there is no insurance coverage not liable from Ex.B.1 policy as deceased and other persons 15 members traveling as gratuitous passengers of goods vehicle.

2. It is impugning the said award, appeal is filed with the contentions in the grounds of appeal that the tribunal should have been fixed the liability on both the vehicles and also to indemnify by the insurers of both the vehicles as the accident was occurred due to head on collision from the equal contribution by both the drivers and

thereby exonerating the 3rd respondent-owner and 4th respondent-insurer of lorry bearing No.AP12 T 0598 is unsustainable and to set aside and to refix the compensation and to fix joint liability.

3. Along with the unnumbered appeal, the appellants/claimants also filed a petition vide MACMAMP No.7447 of 2012 to condone the delay of 509 days in filing the appeal offering explanation for the delay as financial difficulties. The respondents 1 and 3 owners of the two lorries who remained exparte before the tribunal no way necessary parties to the appeal and even impleaded dismissed for default on 16.02.2015 is no way fatal to the maintainability of the appeal as per **M.Chakr Rao v. Y.Baburao** ^[1] and the same is recorded and the delay is condoned subject to not entitled to interest on enhanced amount and the registry to number the appeal if otherwise in order and heard the learned counsel for the appellants and the learned counsels for the respondents 2 and 4 Insurers of both the lorries and perused the material on record.

4.The contention of the 4th respondent-Insurer of the 3rd respondent lorry bearing AB12T0598 is that the award of the tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere that no any negligence of their lorry driver, but for negligence of the driver of the lorry of the 1st respondent where the deceased and others were traveling as unauthorized passengers, hence to dismiss the appeal.

5. Undisputedly, the Ex.A.4 chargesheet filed by the police of Cr.No.9 of 2004 of Pamidi police station against the driver of the lorry of 1st respondent in which Srikanth died and others were received several injuries from the accident while traveling as marriage party, driving in rash and negligent manner and while overtaking tractor in front it the lorry of the 3rd respondent insured with the 4th respondent came in opposite direction, when the driver of the 1st respondent lorry

tried to turn to the left side from which the lorry touched the tractor, then the driver again turned to the right and dashed to opposite lorry and again turned to left and fallen on its left. Therefrom the tribunal observed as per the sub-para-9 of para -1 of the judgment of it is due to the negligent driving of the driver of the lorry of the 1st respondent in which the deceased and others were traveling, the accident took place in saying thereby the First Information Report no way supports of the negligence of both the drivers much less equally but for of driver of the lorry bearing No. AA 8965 of the 1st respondent while overtaking the tractor bearing No.AP12T0598 contributed to the accident while coming from opposite direction and in exonerating the 2nd respondent-Insurer for the deceased and others were traveling as gratuitous passengers.

6. The material on record shows there is head on collision. Not only the P.W.1 but also the other eye witness P.W.2 deposed in this regard. No doubt, the Ex.A.1 FIR from the report of one Murali who was also one of the persons allegedly traveling in the lorry of 1st respondent, it shows that the driver of the lorry while overtaking the tractor proceeded further and of noticing the lorry of the 3rd respondent coming in opposite direction, the lorry of 1st respondent swerved to left touching the tractor and thereby swerved to right that there is a head on collision of both the lorries. It is therefrom the opposite coming lorry supposed to avert the accident. When such is the case, from the head on collision though the main contribution is of the 1st respondent, it cannot be overruled of the contribution of driver of the 3rd respondent. No doubt, the Apex Court in **Jiju Kuruvila vs Kunjamma Mohan**^[2] held that merely because both the vehicles in opposite direction there is no rule axiomatically to say both are equally responsible and contributed but to decide depending upon the facts of each case as to the manner of accident. No doubt, the contributory

negligence depends upon several factors including the size of the road, size of the vehicle, condition of the road and the scene of observation report and M.V.I report as to the extent of damage and of which side of the respective vehicles and as to at which place of the road the accident taken place.

7. Having regard to the above, the principles keeping in mind applying the facts as complied supra for not even the material on record of opposite coming lorry of Respondent No.3 stopped somewhere to avert the accident and not a case of driver of R.1 did not take any precautions from overtaking the tractor proceeding very slowly and not on noticing coming opposite lorry swerved to left from lorry touching the tractor taken right there the accident occurred but for the contribution to the opposite coming vehicle also for the head on collision not a case of the lorry of R.1 dashed at the right backside of the lorry of the R.3 of saying total negligence of driver of R.1, the tribunal should have considered the total ignoring these facts as police final report and F.I.R. is not only a basis but for also with reference to it, if not the evidence on the tribunal on record particularly the P.W.2 one the witnesses deposed so also the P.W.1. No doubt parents of the deceased who were traveling in the vehicle of R.1. Thus, it is just to fix 20% negligence on the part of the driver of the lorry of R.3 insured with R.4 covered by Ex.B.2 policy undisputedly. So far as the exoneration of the 2nd respondent concerned, for nothing to show the deceased was succumbed to injuries much less if not crush injury from fall underneath the lorry of R.1, where they were traveling as marriage party including the others, after the lorry fallen on left side but for otherwise as can be seen from the facts that to say if it is a crush injury succumbed therefrom fallen underneath the vehicle to say to fall on the ground though unauthorized passengers thereafter of third party to fix liability. Here they are gratuitous passengers of the goods vehicle for no insurance liability, insurance company cannot be fastened with liability and in similar facts, the Apex Court categorically held in

National Insurance Company Limited Vs. Savitridevi^[3]

8. Having regard to the above, the tribunal is right in exonerating the 2nd respondent for nothing to indemnify the 1st respondent for policy not covered the risk. So far as the liability of the respondent Nos.3 and 4 as referred supra as 20% contributory negligence, the Insurer also liable to indemnify.

9. Coming to the quantum of compensation amount, the deceased was aged about 14 to 15 years at the time of accident, the mother's age is more than 35 years at the time of accident and even taken from the age minimum Rs.50,000/- for no fault liability, Rs.1,50,000/- additional including for loss of estate and funeral expenses, maximum of Rs.2,00,000/- is the just compensation and 20% liability therein comes to Rs.40,000/- to be made liable by respondents 3 and 4 and remaining Rs.1,60,000/- by respondent No.1.

10. In the result, the appeal is partly allowed by enhancing the compensation from Rs.1,50,500/- to Rs.2,00,000/- by confirming the interest of 7.5% p.a. from the date of petition till realization but the appellants/claimants are not entitled to interest on the enhanced compensation. The 1st respondent to pay Rs.1,60,000/- (towards 80% contributory negligence) and the respondents 3 and 4 are liable to pay Rs.40,000/- (towards 20% contributory negligence). The respondents 1,3 and 4 are directed to deposit the enhanced compensation amount within one month from the date of receipt of this order. On deposit or execution and recovery from the respondents, the claimants are permitted to withdraw the amount only on payment of deficit court fee on the enhanced amount as per the M.V.Rules. The award of the tribunal in other respects holds good. There is no order as to costs. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 05.01.2016

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[\[1\]](#) 2001 (1) ALT 495 DB

[\[2\]](#) (2013) ACJ page 2141

[\[3\]](#) 2013(11) SCC 554