

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

C.M.A.No.1065 OF 2003

JUDGMENT:

The 3rd respondent/ Insurer among the three respondents including the driver and owner of the van bearing No.AP 5 X 878, impugning the award of the tribunal dated 05.11.2002 in O.P.No.597 of 1997 filed by the injured-claimant on the file of the learned Chairman of the Motor Accidents Claims Tribunal-cum-I Addl.District Judge, East Godavari, at Rajahmundry (*for short, 'Tribunal'*), under Section 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*), for a claim of Rs.80,000/- since granted compensation of Rs.15,000/- with joint liability with interest at 9% p.a., maintained the appeal with the contentions in the grounds of appeal that the tribunal gravely erred in fixing joint liability despite the van is a goods vehicle and the injured/ claimant is an unauthorized passenger of the goods vehicle and not covered by the policy thereby set aside the award of the tribunal fixing joint liability and exonerating the Insurer by placing reliance on the expression of the Apex Court in New Assurance Company Vs. Asha Rani¹.

2. Whereas, it is the contention of the learned counsel for the claimant injured that the award of the tribunal holds good but for no cross-examination, to grant compensation as prayed for. Hence, to dismiss the appeal.

3. The 2nd respondent to the appeal, no other than the driver of the vehicle, even not served no way fatal to the maintainability of the appeal for 3rd respondent to the appeal-owner is contesting and it is also the submission that there is nothing to interfere with the award of the tribunal.

¹ (2003) 2 SCC 233

4. Heard and perused the material on record.

5. The accident was dated 08.01.1997. It was while the injured was travelling in the goods van the accident occurred. There is nothing on record to say he is representing the goods and travelling as an attendant of the goods. No doubt, the manner of the accident itself shows it is while negotiating the curve, the vehicle turned turtle and after his fall, the vehicle fallen on him and he sustained the injuries. The law is otherwise fairly settled that the moment he fell down, he is a third party and till then even considered as unauthorized passenger and the injuries sustained is not directly from the fall but for after his fall from the vehicle fallen on him. To that extent, the Insurer has to indemnify the owner of the vehicle and from the say that but for his travelling unauthorizedly, the accident could not have been occurred. The fixing of 60% contribution on the Insurer and 40% on the claimant for his contribution is just. However, fact remains that the accident occurred was in 1997 and the award of the tribunal was prior to the expression of the Apex Court in Asharani supra and the tribunal clearly held referring the expression of the Apex Court in Andhravarapu Kamaraju Vs. Chinthada Savitramma² and also other expression in New India Assurance Company Vs. Satpal Singh³.

6. In fact, the expression of the Apex Court subsequent to Asharani supra laid down in National Insurance Company Limited Vs. Baljit Kour⁴ which clarifies the position that the expression of Asharani supra is only prospective in operation where awards already passed fixing joint liability based on Satpal singh supra prior to the expression of Asharani supra, the joint liability can be converted as pay

² (2002) ACJ 926

³ AIR 2000 ACJ 1

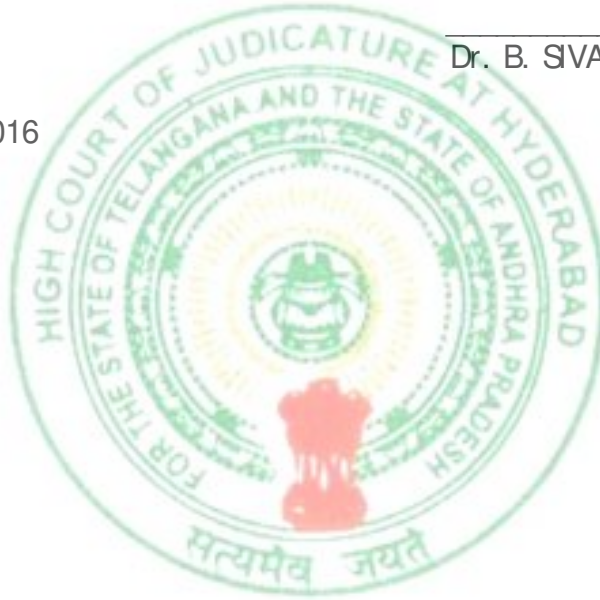
⁴ (2004) 1 ALD 98(SC)

and recovery. Having regard to the above and from the above conclusion of the injuries sustained after his fall from the fall of the vehicle on him and what the tribunal awarded of Rs.15,000/- even represents to the injuries 60% liability, there is nothing even to order for pay and recovery, for this Court while sitting in appeal.

Point No.2:

7. In the result, appeal is dismissed with no costs. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Date: 13.10.2016
Vvr



Dr. B. SIVA SANKARA RAO, J