

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CMA No.2447 OF 2003

JUDGMENT:

The 2nd respondent-Insurer among the two respondents including the owner of the jeep bearing MP 22/ B/ 0901 in M.V.O.P.No.841 of 1998 maintained under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*) on the file of the learned Chairman of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Adilabad (*for short, 'Tribunal'*), by the claimants no other than the wife, minor son, parents and sisters of the deceased Bikshapathi for the death of him in the motor accident dated 24.02.1998 for a compensation of Rs.3,00,000/- since awarded of Rs.2,27,000/- with interest at 9%p.a. with joint liability, by the tribunal vide award dated 23.12.2002, impugning the same, preferred the appeal with the contentions in the grounds of appeal that the tribunal ought to have considered the application under the W.C. Act, and should have dismissed the appeal for filing under the M.V.Act, apart from that the policy is act policy and the deceased was in the course of employment as driver of the vehicle and the compensation awarded is excessive as well as rate of interest and thereby sought for allowing the appeal.

3. Whereas, it is the submission of the learned counsel for the claimants that the award of the tribunal holds good and there is nothing to interfere with the award of the tribunal while sitting in appeal.

4. As per the Section 157 of the M.V.Act, option is with the claimants either to invoke the W.C. Act or the M.V.Act, the expression of the Apex Court in National Insurance Company Vs. Mastan¹ is also very clear in this regard, the policy is no doubt the act policy including

¹ (2006) (2) SCC 641

the risk of a workman. Even from the F.I.R. the deceased was in the course of employment while driving out of his negligence died. The negligence of the deceased is not criteria in the course of employment. However, it is once a not a comprehensive policy by covering additional or unlimited risk but act policy, it is the compensation under W.C.Act that can be awarded though the claim is maintained under the M.V.Act. Once such is the case from the factor from the age is 22 years 221.37. Even therefrom as on the date of accident year 1998, earnings estimated about Rs.2,000/-, what the tribunal awarded no way requires interference but for to reduce rate of interest from 9%p.a. to 7.5%p.a.

5. Accordingly and in the result, the appeal is allowed in part while confirming the compensation however by reducing the rate of interest from 9%p.a. to 7.5% p.a. from the date of petition till realization. In other respects, the award of the tribunal holds good. No costs. Consequently, pending miscellaneous petitions, if any, in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 28.09.2016
Vvr