

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.207 of 2010

JUDGMENT:

The injured claimant, no other than driver of the auto of his deceased brother-Soma Penchalaiah (husband of the 1st claimant and son of claimants 2 and 3 in M.V.O.P.No.395 of 2006, who was also travelling as owner cum passenger in the auto) bearing No.AP 26W 5564, which is in fact a goods trolley with only a single seating capacity, from the tribunal common disposal of both the claims including the claim herein in MVOP No.606 of 2006, from the contest by the 2nd respondent-insurer from the 1st respondent-wife of the owner did not choose to contest, but for in the claim maintained by her, dismissed both the claims by common award dated 16.12.2008 as not sustained and impugning the same, maintained present appeal.

2. The contentions of the appellant-claimant in the grounds of appeal vis-à-vis oral submissions are that the claimant merely because of brother of the deceased-owner of the auto, in the same accident sustained injuries, having valid driving license produced under Ex.A6 and Ex.A4-C-book showing the deceased was travelling in the auto as owner of the vehicle, no way disqualifies to claim compensation, when working in the course of employment as employee under the owner for the Workmen's Compensation Act, claim from Section 167 of option with the

claimant, though confined to the claim either invoking the provisions of Workmen's Compensation Act or Motor Vehicles Act, as the case may be, thereby dismissal of the claim along with the death claim of the owner not a third party is unsustainable and sought for allowing the claim as prayed for of Rs.50,000/- compensation claimed under Section 163-A of the Act, for the injuries sustained in the accident.

3. On 19.09.2005 at about 3.30 a.m. at Peramana Cross road of Sangam Mandal of Nellore District from the alleged rash and negligent driving of the driver of unknown lorry dashed the auto, driven by the injured. The injuries sustained by the injured while he was driving the auto belonging to his deceased brother in the accident and it is his carriage with seating capacity of one meant for the driver. Ex.A6 is the driving license and Ex.A4 is the C.Book. Once such is the case, the claimant is entitled to the compensation as the accident was occurred in the course of employment, irrespective of any negligence of the injured-claimant and even the opposite coming unknown lorry not made as party, but as held in *Khenyei v. New India Assurance Company Limited*¹ that the non-impleadment of the other vehicle owner or insurer is no way fatal but for left open to the vehicle insurer and the owner impleaded to pay the compensation being the tort feasons to claim subsequently the

¹ 2015(9) SCC 273

apportionment from the other tort joint feasons from the contribution if any. Thus, dismissal of the claim by the tribunal is unsustainable.

4. Now, coming to the quantum of compensation, as per Ex.A5-wound certificate and evidence of PW.2-claimant, he sustained a lacerated injury swelling of right ankle joint with no bone fracture, abrasion of right thigh, small multiple abrasions on face, it is just to award for the said simple injuries including lacerated injury of 7x4x3 c.m. supra of right leg, for medical expenses, treatment, attendant charges, transport charges and extra nourishment, in all Rs.20,000/- with interest at 7.5%p.a. from the date of petition till realization.

5. Accordingly and in the result, the appeal is partly allowed by granting compensation of Rs.20,000/- with interest at 7.5% p.a. from the date of petition till realization. The respondent-insurer shall deposit the said amount within one month and on such deposit the claimant is entitled to withdraw, else, the claimant can execute and recover. No costs.

6. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:17-11-2016

pab