

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.Nos.266 and 261 of 2010

COMMON JUDGMENT:

The claimants respectively of the two deceased persons of the same accident, while they were proceeding on Bazaz CT 100 (number not mentioned), due to the rash and negligent driving of the driver of the opposite coming Tractor-Trailor bearing Nos.AP 04 FTR 7059 and AP 04 DTR 9556 stated succumbed, maintained the claims in O.P.No.765 and 766 of 2007, for a compensation of Rs.5,00,000/- each, under Section 166 of the Motor vehicles Act (for short 'the Act').

2. The owner of the Tractor-Trailor-1st respondent remained ex parte and the insurer contested the appeals, which no doubt on the quantum but impugning the common award of the tribunal dated 12.10.2009, exonerating the insurer saying the Tractor-Trailor of the 1st respondent supra not at all involved. The finding of the tribunal is for the reason that in the accident out of the rider and pillion rider, the rider of the bike died at the spot and the pillion rider survived for 15 days and it was while undergoing treatment, the statement was recorded in registering the crime and he mentioned the opposite vehicle involved was Tractor-Trailor but did not mention the registered number and in the first

inquest, the vehicle number is not mentioned for F.I.R. is silent regarding the vehicle number. It is subsequently after death of the second person, the vehicle number is mentioned in the inquest and the police after investigation filed the charge sheet saying the vehicle numbers of the Tractor-Trailor supra of the 1st respondent insured with the 2nd respondent involved.

3. It is the said lacunae in F.I.R., though it need not be an encyclopedia but for to say the other deceased survived for 15 days if at all noticed vehicle, should have been mentioned the numbers, in not mentioning drawing inference, resulted in dismissal of the claims, exonerating the respondents. In fact, once the vehicle during police investigation traced and F.I.R. also mentions as Tractor-Trailor involved and nature of the vehicle involved or not different, non-mentioning of registration numbers of the Tractor-Trailor in the F.I.R. and first inquest, when no way fatal, that too, when the second inquest mentioned at the earliest point of time about 15 days after the accident from the second injured died, apart from police investigation from the final report and there is no evidence of the respondents but for cross examination of PWs.1 to 3, who also deposed regarding involvement of the vehicle, tribunal is not right in exonerating the insurer instead

of fixing liability, as the quantum is not in dispute but for the liability awarded of the tribunal is set aside.

4. Accordingly, both the appeals are allowed and respondents 1 and 2 are jointly and severally liable to pay the compensation of Rs.4,49,000/- with interest at 6%p.a. to the respective claimants from the date of petition till realization. In other respects the award of the tribunal holds good. No order as to costs.

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

Date:26.10.2016
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Dr. B. SIVA SANKARA RAO, J

