

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.4732 of 2008

JUDGMENT:

The 2nd respondent-insurer maintained the appeal against the owner of the vehicle as 1st respondent and the three claimants as respondents 2 to 4. The claim petition in O.P.No.433 of 2003 was maintained under Section 166 of the Motor Vehicles Act for a compensation of Rs.3,00,000/- for the death of the husband of the 1st claimant on 28.08.2002 at about 7.30 p.m. or so at Balapanur metta, Panyam Mandal of Nandyal Taluk, saying while the deceased and other persons were the coolies for loading and unloading and they are proceeding on the trailer of the tractor; the tanker bearing No.TN 27 S 7130 of the 1st respondent insured with 2nd respondent while proceeding in opposite direction, in a rash and negligent manner, dashed the trailer as a result of which the deceased fell down from the trailer and succumbed and other persons fell down and sustained injuries. The tribunal from the contest having held that the accident was the result of rash and negligent driving of the driver of the 1st respondent awarded compensation of Rs.2,14,000/- with interest at 9% p.a. vide award dated 28.10.2005. It is impugning the same, present appeal is filed.

2. One of the main contentions of the insurer/ appellant is that the deceased himself was driving the tractor-trailer without license unauthorizedly, being a coolie engaged and there is negligence only on the part of the deceased and even otherwise the tribunal ought to have been fixed joint liability on both the vehicles and went wrong in fixing liability only on the tanker of the 1st respondent and rate of interest is also excessive besides quantum of compensation.

3. Whereas, it is the contention of the learned counsel for the claimants that the award of the tribunal holds good and for no cross objections, there is nothing to interfere including on rate of interest.

4. Heard and perused the material on record.

5. Leave about finding of the tribunal, even taken for argument sake that the driver of the opposite coming vehicle i.e., tractor-trailer also contributed to the accident, the non-impleadment of the said tractor driver, owner and insurer no way fatal to the maintainability of the claim even from that say as also from the latest expression of the Apex Court in Khenyel v. New India Assurance Company Limited¹ but for after payment of compensation to make a claim for

¹ 2015(9) SCC 273

contribution from the driver, owner and insurer of the tractor-trailer by saying their contribution was also there.

6. Having regard to the above, once the tribunal fixed the compensation, it is for the appellant-insurer to pay and on such payment remedy is left open without need of filing of fresh petition but for in the execution to maintain claim for apportionment of any liability against tractor-trailer owner and insurer if any and the driver. Leave about whether the deceased was driving the vehicle and he got license or not and the liability of the insurer therein and if so to the extent of pay and recovery etc., are the matters that also left for consideration in such event and without prejudice to such right, there are no grounds to interfere including on the quantum **even**, but for to reduce rate of interest from 9% to 7.5% as per *Rajesh Vs. Ranbir Singh*² and *TN Transport Corporation v. Raja Priya*³.

7. Accordingly, the appeal is partly allowed. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date: 12-09-2016
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² 2013 ACJ 1403

³ (2005) 6 SCC 236