

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.309 OF 2010

JUDGMENT:

The 1st claimant no other than mother of deceased Simhachalam aged about 40 years, among the 4 claimants of the remaining are no other than the brothers of deceased not dependents, of the claim maintained against the APSRTC and the driver of its bus bearing No.AEZ 4671 under Section 166 of the Motor Vehicle Act, 1988 (for short 'M.V. Act') for compensation of Rs.1,00,000/- of the accidental death dated 20.10.1998 in O.P.No.336 of 1999 on the file of the learned Chairman of the Motor Accidents Claims Tribunal-cum-I Addl.District Judge, East Godavari (*for short, 'Tribunal'*), with averments that on the fateful day at about 11.30 A.M. while the deceased was proceeding in an auto bearing No.AP 5U 2202 from Kothapeta to Ravulapalem and when the auto reached near Para Office in Ravulapalem, the said bus of the 2nd respondent driven by the 1st respondent in a rash and negligent manner coming in opposite direction, dashed the auto from which the deceased sustained injuries and died on the way to Government hospital, Kothapeta and the deceased was an agricultural cooli and on whose earnings the claimants are depending upon. From the contest by the RTC while disputing and denying the allegations saying one Manyam Ravindranath Tagore, one of the passengers in the auto set the law into motion in registering the Ex.A.1 FIR by Cr.No.115 of 1998 in Ravulapalem Police Station against the auto driver and the claim if any is against the auto driver, owner and Insurer and not against the driver of the bus supra and the claim is not sustainable for non-joinder of said auto owner and Insurer. From the evidence on record of P.Ws. 1 and 2 and bus driver R.W.1 and Exs.A.1 to A.4, the tribunal dismissed the claim with

observations that from the very FIR and the evidence produced by the claimants it shows the auto driver was at negligence but not bus driver. Thus, the claim against the RTC and its bus driver no way surviving, by impugning the sum maintained the appeal.

2. The contentions in the appeal showing the other claimants as respondents 1 to 3 and bus driver as R.4 and the RTC as R.5 in nutshell including from the oral submissions of the learned counsel for the claimant-appellant are that the tribunal ought to have considered the evidence of P.W.2 independent eye witness travelling along with the deceased in the same auto who deposed of the accident was the result of the negligent act of the bus driver and should not have been dismissed the claim by relying simply on the evidence of so called M. Ravindranath Tagore who gave report to police basing on which the crime vide Ex.A.1 FIR is registered and the tribunal should have been excluded the evidence of R.W.1 bus driver who is an interested witness, that the tribunal failed to observe that at the instance of R.W.1 bus driver only, one Manyam Ravnidranath Tagore lodged a complaint against the auto driver. Once there is negligence on the part of the bus driver in causing accident, the appellant sought for setting aside the dismissal award of the tribunal by allowing the appeal granting claim as prayed for.

3. Whereas, it is the submission of the learned counsel for the APSRTC that the award of the tribunal holds good and while sitting in appeal by this Court, there is nothing to interfere with the award of the tribunal, hence to dismiss the appeal.

4. The finding of the tribunal shows not only from the FIR but also from Ex.A.2 MVI report, it shows the front portion of the auto was badly damaged and not in a moving condition and no chargesheet even filed

and inquest is based on FIR registered on the complaint of one of the passengers of the auto who set the law into motion. It is unknown whether the P.W.2 is cited as witness in the chargesheet and against whom the police filed the chargesheet. No doubt as per the expression of the Apex Court in *Khenyei Vs. NIAC Limited*¹, when there are some joint tort feasons against whom the claim is maintained mere non impleadment of others, no way fatal to dismiss the claim, to award compensation but for those to recover against the others for any contribution or apportionment, as the case may be. However, from the material placed on record, the tribunal prima facie came to the conclusion of nothing shown the involvement of bus due to negligence of its driver even from the documents of claimants i.e. FIR and inquest and the MVI report which show only negligence of auto driver, thus, the bus driver cannot be called joint tort feason. Then it is difficult to apply the principle in the above expression *Khenyei supra*, leave about Section 168 of the M.V.Act entitles as also by the three Judge Bench expression in *National Insurance Company Limited Vs. Swaran Singh*² of inter se liability among the respondents also, the tribunal in deciding and what is the principle extended in the *Khenyei supra* is even some of the joint tort feasons not impleaded and the same is no way fatal for the tribunal can award against those impleaded to pay and recover against the others who are not impleaded by filing execution proceedings in seeking apportionment of liability by any contribution or the like among them inter se. Here the evidence is laconic and insufficient to fix much less to held the RTC is liable but for to remand the matter to the tribunal.

5. Having regard to the above, the appeal is allowed and remanded to the tribunal by directing to implead the owner and Insurer of the auto

¹ (2015) 9 SCC 273

² (2004) 3 SCC 297= 2004 ACJ 1

from the numbers being furnished by the claimants, by virtue of this order by invoking Order I Rule 10(2) CPC and with an opportunity to file any written statement or counter by them within the time being fixed and then by affording further opportunity to both sides to adduce any further evidence uninfluenced by the finding arrived by the tribunal in the impugned award to determine afresh including any liability of the RTC if at all along with main contribution of the driver of the auto for its owner and Insurer to be made liable being necessary parties. No costs. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Date:30.12.2016
Vvr



Dr. B. SIVA SANKARA RAO, J