HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CMA No.1842 OF 2004

JUDGMENT:

The claimants 1 to 4 no other than the parents and two minor children of the deceased by name Laxminarasaiah, aged about 34 years as per the Ex.A.2, Postmortem report, in O.P.No.930 of 2000 on the file of the learned Chairman, Motor Accidents Claims Tribunal–cum-District Judge, Kadapa district, (*for short, 'Tribunal')*, maintained u/s. 166 of the Motor Vehicle Act,1988 *(for short, 'the Act')*, claiming compensation of Rs.8,00,000/-(Rupees eight lakh only) against the driver who was the original owner, the transferee owner, Insurer of the Jeep bearing No.AP 02 A 6448 and the APSRTC, for involvement of the jeep and bus bearing No.AP 10 Z 5219 while the jeep was proceeding in opposite direction near electrical sub station near Sathram on Kodur-Rajampet road, being driven by its driver in a rash and negligent manner on 13.04.2000 and the tribunal since awarded compensation fixing liability against the 1st and 2nd respondents for Rs.8,00,000/- with interest at 9% p.a. by exonerating the 3rd respondent-Insurer while holding that the accident was the result of negligence of the driver of the jeep and for no fault of the APSRTC bus i.e. R.4 even, impugning the illegality and correctness particularly in exoneration of the Insurer, the petitioners preferred the appeal. Before the tribunal, 1st respondent remained exparte, and the respondents 2 to 4 contested however, the appeal was ended in dismissal even against the 2^{nd-} and 4th respondent for default even default dismissal against the 1st respondent remained exparte before tribunal is no way fatal.

2. The contentions in the grounds of appeal mainly are impugning the exoneration of the Insurer from liability saying tribunal otherwise ought to have awarded pay and recovery by following three judge Bench expression of the Apex Court in ***National Insurance Company***

Limited Vs. Swaran Singh[1]. It is the submission of the learned counsel for the 3rd respondent/Insurer that once the policy is an act policy and not covering risk of the inmates of the jeep from the policy including from the evidence of their employee-R.W.1 before the tribunal by exhibiting Ex.B.1 which clearly speaks of a policy, there is nothing to interfere with the award of the tribunal but for dismissal even otherwise in appeal against the Insurer when dismissed against the owner of the vehicle no way sustained.

3. Heard and perused and material on record.

4. R.W.1 is the Senior Assistant of the R.3-Insurance Company. He deposed in his chief affidavit evidence that the policy is an act policy even he was cross-examined on 21.01.2004 by the claimants but there is no specific suggestion of the same is not an act policy though it is suggested on Ex.B.1 policy covers risk of passengers of the vehicle, even whether he is a farepaid or gratuitous passenger, once entitled when without any capacity of the passengers to cover the risk that cannot be given much weight, the deceased was claimed to be the farepaid passenger and the policy prohibits hiring once the policy is not a standard package or comprehensive policy or even as per IRDA regulations which came into force w.e.f.16.11.2009 for the policy is the act policy, there is nothing to make the Insurer liable to any of the inmates of the vehicle from the act policy to indemnify much less even to order pay and recovery, thereby there is nothing to interfere with the award of the tribunal.

5. In the result, the appeal is dismissed. There is no order as to costs in the appeal. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:10.06.2016
Vvr

---

[1] (2004) 3 SCC 297=2004-ACJ-1