

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. M.P. No.5260 OF 2012

IN/ AND

M.A.C.M.A. No.707 OF 2016

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JUDGMENT:

The 3rd respondent—insurer among three respondents including driver, owner of lorry bearing No.AP 16Y 6357 in the M.V.O.P. No.187 of 2007, maintained against them by three claimants, no other than wife, and major sons of deceased by name Satya Narayana, aged about 44 years, maintained the claim under Section 166 of M.V Act for Rs.4,50,000/- with the averments of deceased was traveling as representative of the goods i.e., flower pots and due to rash and negligent driving of the driver the lorry turned turtle, he fell down and flower pots fallen on him, as a result, he breathed the last. The Tribunal, therefrom, held that the accident was the result of rash and negligence of driver of respondent No.1 and also observed that the deceased was traveling as representative of the goods, awarded compensation of Rs.2,90,000/- with interest at 7.5% per annum vide award dated 20.12.2011. It is impugning the same, the insurer maintained the appeal with the contentions that the Tribunal gravely erred in considering the deceased was unauthorized passenger of the goods vehicle and the policy not covered the risk either under Section 147 M.V Act or even under any extra contractual liability including from that provision and thereby sought for exoneration of the insurer. Apart from it, other contention of quantum of compensation awarded by the Tribunal is also excessive and in support of that one of the grounds mentioned as PWs.2 and 3 are introduced witnesses no other than similar unauthorized passengers of the goods vehicle.

2) Whereas it is the contention of the learned counsel for respondents/ claimants that the deceased was representative of the goods and the act policy itself covers the risk under Section 147 of M.V

Act but for no cross objections to enhance and for this Court while sitting in appeal, there is nothing to interfere with the quantum arrived by the Tribunal and sought for dismissal.

3) The delay of 112 days in filing the appeal is condoned as the reasons assigned are due to administrative delay in getting opinion and sanctioning the amount for filing appeal.

4) The appeal is taken up for hearing at request of both the parties. Heard and perused the material on record.

5) Respondents 1 and 2—owner and driver of the vehicle even served failed to attend, hence taken as heard.

6) No doubt, the evidence on record shows there are several persons traveling in the goods vehicle and not the deceased alone.

The deceased not even sat in the cabin but on the top of the load of the flower pots as held by the Apex Court in ***National Insurance Company Limited vs Cholleti Bharatamma and others***^[1] to claim as owner or representative of the goods but not on the top of the load of the flower pots as held.

7) Even otherwise from the manner of accident, the deceased died not while traveling as unauthorized passenger of the goods vehicle and considering from that expression in the factual scenario but after the vehicle turned turtle, he was fell down and when the movement he fell down, he became a third party and not died because of fall from the vehicle but for from the load of the vehicle fallen on him. Once such is the case, it is outcome of rash and negligent driving of the driver of respondent No.1, resulted in its turning turtle though but for originally travelled as unauthorized passenger and on the ground he was a third party he could not die, thereby 40% contribution of the deceased is to be taken and 60% liability shall be thereon on the insurer and the insured and the liability as fairly settled by the expressions of this court including in M.A.C.M.A No.377 of 2007

dated 01.04.2014 among them by referring to the following expressions at para No.6 in **A.Subramani Vs. Mani**^[2], **Thoz Nilabar Transport Company Vs. Valiammal**^[3], **National Insurance Company Limited Vs. Savitridevi**^[4], **Oriental Insurance Company Limited Vs. Edward NcruizR**^[5], **Panaji Bench, Kanwar Samsher Singh Vs. Satbir Singh**^[6] and **United India Insurance Company Limited Vs. Koravi Yeji Mollamma**^[7].

8) Once such is the case, the insurer and injured liable to pay 60% compensation. Coming to the quantum, the deceased as referred supra aged 44 years and for the age group between 41-45, the suitable multiplier applicable is '14' as per **Sarla Verma vs Delhi Transport Corporation**^[8]. Even as per **Latha Wadhwa vs State of Bihar**^[9] in the absence of proof of earnings, minimum Rs.3,000/- is to be taken and the accident occurred on 14.12.2008, which is nearly after 7 years with proportionate increase Rs.3,700/- per month is to be taken and as the claimants are three in number viz., wife and major children, 1/3rd to be deducted towards personal expenses, it comes to Rs.4,14,400/- (Rs.3700/- X 2/3 X 12 X14). Apart from it, Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses, in all it comes to Rs.5,49,400/- and 60% of liability of insurer therein comes to Rs.3,29,640/- to which the claimants are entitled to. Thus, what the Tribunal awarded is no way excessive.

9) Accordingly and in the result, the appeal is partly allowed while holding 60% liability on the Insurer and the insured as the deceased was shown originally as unauthorized passenger but by the time of death he was third party as such negligence of the deceased 40% is to be taken, the insurer is liable for 60% and what the Tribunal awarded is no way requires interference. No order as to costs.

10) Consequently, miscellaneous petitions if any, pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.11.02.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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[\[1\]](#) AIR 2008 SC 484
[\[2\]](#) 1990 ACJ 37 Madras
[\[3\]](#) 1990 ACJ 201 Madras
[\[4\]](#) 1991 ACJ 1991 Delhi
[\[5\]](#) 1995 ACJ 1106 BOMBAY
[\[6\]](#) 2006 ACJ 789 Delhi
[\[7\]](#) 2007(2) ACK 366
[\[8\]](#) 2009 ACJ 1298
[\[9\]](#) AIR 2001 SC 3218