

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CMA No.3196 OF 2004

JUDGMENT:

The M.V.O.P.No. 989 of 1998 on the file of the I Additional District Judge, Guntur, was maintained by one Chukka Maria Rani against the two respondents viz; the alleged present owner-1st respondent by name A.Nagesh and the original owner as 2nd respondent by name L.Rama Subba Rao of the Hero Honda motor cycle bearing No.AP 7A 2467 alleging that the clerk of A.Nagesh-1st respondent by name Immadi Vasantha Rao while riding motor cycle on 22.11.1997 at about 7.00 P.M., when the complainant and her sister Prakashmma were attending calls of nature at the road side due to his rash and negligent driving, dashed them, as a result she sustained fracture injury. The 2nd respondent did not choose to contest, having been remained exparte erstwhile owner-1st respondent contested and the rider of the motor cycle Immadi Vasantha Rao though a necessary party, he was not impleaded that too even subsequently at least by tribunal under Order I Rule 10(2) CPC. When it is the contest of the 1st respondent in the very counter saying he is not the owner and he never possessed the vehicle and he does not know alleged Immadi Vasantha Rao and he never worked as a clerk under him and he does not know even accident and he is nothing to do with the alleged motor cycle or alleged accident by Immadi Vasantha Rao to make him liable. It is after evidence of P.Ws. 1 and 2 including from the cross-examination with reference to the defence by the 1st respondent and with reference to Exs.X.1 and X.2 case sheet and X-ray films exhibited by P.W.2 doctor and A.1 to A.3 FIR, Wound certificate and medical bills, the tribunal fixed joint liability against both the respondents for Rs.37,836/- with interest at 6%p.a. vide award dt.29.11.2003. It is impugning the same, the present appeal is preferred

by the 1st respondent of the claim petition with the contentions that the tribunal erred in fixing liability against him though the liability of the alleged driver of the motor cycle is not established and the claimant failed to prove that the alleged vehicle and its driver connected with him, hence to set aside the award of the tribunal.

2. Heard the learned counsel for the appellant who submitted that in support of his counter before the tribunal that was put to cross-examination of P.W.1 of there is no iota of evidence to show he is concerned with the vehicle or with the accident in question to mulk him with liability. The claim petition 2nd respondent who remained exparte before the tribunal even impleaded not turned up and the appeal is dismissed for default against him as per the expression in **Meka Chakrarao v. Yelubandi Baburao**¹ no way fatal is the submission and the same is recorded.

3. Whereas, it is the contest of the learned counsel for the appeal 1st respondent-claimant that the award of the tribunal holds good and the burden is on the appellant to show by producing any record of the vehicle is never in his name and he has nothing to do with it. He did not even choose to enter into witness box, thereby suffice to draw adverse interference and to dismiss the appeal.

4. As referred supra, the said Immadi Vasantha Rao is a necessary party to the claim petition as very petition says it is due to his negligent driving of the Hero Honda motor cycle only, the accident occurred and once there is a dispute by the appellant saying he never possessed much less owner of the motor cycle in question and one Immadi Vasantha Rao never worked as a clerk under him. It is the duty of the claimant, in case of any illiteracy of them besides representing even through

¹ 2001 (1) ALT 495 DB

advocate, at least the tribunal as a court witness call from the RTA staff concerned to produce the particulars of registration of the vehicle as to, in whose name it stands as on the date of the accident, to fix joint liability with the said Immadi Vasantha Rao along with the owner of the vehicle. The claim petition 2nd respondent claimed as original owner, who remained exparte, did not choose to contest as to either by disputing ownership or by saying any transfer in favour of the appellant herein and the tribunal thereby gravely erred in awarding compensation with joint liability against the appellant along with claim petition 2nd respondent.

5. Accordingly and in the result, the appeal is allowed by setting aside the award of the tribunal however matter is remanded to the tribunal with a direction to implead *suo moto* and by virtue of this order the said Immadi Vasantha Rao as co-respondent to the appeal and after from receiving any of his counter and service and from any further evidence of parties, summon the R.T.A. concerned if not chosen by the claimant, as a court witness to bring the registration particulars of the motor cycle in question as on the date of accident to fix liability on said owner along with the said Immadi Vasantha Rao, for said owner allowing Immadi Vasantha Rao to use the vehicle, as joint tort features on own merits from the contest. There is no order as to costs in the appeal. Consequently, pending miscellaneous petitions, if any, in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:08.08.2016
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