

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.658 OF 2008

JUDGMENT:

The 2nd respondent-Insurer of the crime vehicle Tractor and Trailer bearing No.AP 37 AB 4510 and AP 37 T 4052 among the four respondents including its owner and owner and insurer of Bajaj motor cycle, impugning the award of the tribunal dated 29.11.2007 in M.V.O.P.No.1169 of 2005 on the file of the learned Chairman, Motor Accidents Claims Tribunal-cum-District Judge, at Khammam (*for short, 'Tribunal'*), filed under Section 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*), by the injured 5 claimants, no other than the wife, two minor children and parents of the deceased Kishore no other than brother of the 3rd respondent-owner of the Bajaj motor cycle, for a claim of Rs.6,50,000/- since awarded of Rs.5,56,000/- with interest at 7.5%p.a. by fixing liability against the Insurer (appellant herein) and owner of the tractor, by exonerating 3rd and 4th respondents(owner and insurer of the Bajaj motor cycle) holding that the accident was the result of the negligence of the driver of the tractor and trailer; the appellant herein preferred this appeal contending the quantum is excessive as well as liability.

2. Heard the learned counsel for the appellant-Insurer of the crime vehicle and also learned counsel for the claimants and perused the material on record.

3. The factual matrix from the evidence on record proved before the tribunal is the tractor and trailer was stationed on the left side of the road without blinking lights. The deceased was riding motor cycle of his brother claim petition 3rd respondent and it was on the fateful day

dated 06.09.2004 at about 7.00 P.M. after negotiating turning at Tekulapalli village on the road leading to Sathupally from Wyr, one lorry coming in opposite direction from V.M.Banjar side with its head lights focusing and moved thereby the motor cycle towards left and in that process, the motor cycle hit the stationed tractor and trailer, from which he sustained the injuries and succumbed while undergoing treatment later, vide crime No.141 of 2004 at V.M.Banjar Police Station.

4. From the claim petition averments as well as from the evidence, it is shown that there is contribution to the accident by the deceased in dashing left side stationed tractor and trailer without blinking its lights. Thereby the tribunal gravely erred in fixing entire liability on the owner and Insurer(appellant herein) instead of considering the composite negligence of the deceased also. Though it is the submission of the learned counsel for the appellant that it is an equal liability at best to fix composite negligence of deceased 50%, this Court feels it just to fix 40% on the deceased and remaining 60% on the owner and Insurer of the tractor and trailer supra. So far as the liability of the claim petition 3rd and 4th respondents i.e. owner and insurer of the motor cycle is concerned, the deceased was proceeding on the motor cycle ridden by him and on perusal of the policy shows it covers personal accident claim for Rs.1,00,000/- which is not only to the owner but also to any rider of that vehicle. The claimants are entitled to recover from the claim petition 3rd and 4th respondents as held in recent expression of the Apex Court Khenyei Vs. NIAC Limited¹ and even other vehicle owner and Insurer not impleaded, the liability can be fastened on the vehicle owner and Insurer impleaded to claim by them. Here the facts are somewhat different as the owner and Insurer of the motor cycle already impleaded

¹ (2015) 9 SCC 273

and they contested including by admitting about the Personal Accident Coverage upto Rs.1,00,000/- . No doubt so far as the Personal Accident Coverage claim concerned, the deceased is not a third party but for stepping into the shoes of the insured in riding the motor cycle and the remedy is otherwise to approach some other forum or to maintain a civil suit, the liability also can be fixed and that too in the peculiar facts and from the discussion supra and the liability of Personal Accident Coverage not in dispute, to avoid multiplicity of litigation, this Court to subserve the ends of justice, direct the claim petition respondents 3 and 4 to pay the Personal Accident Coverage of Rs.1,00,000/- to the claimants.

5.The remaining negligence on the part of the deceased for nothing more to claim against the respondents 3 and 4 owner and insurer of the motor cycle driven by the deceased. Now coming to the 60%liability of the appellant to indemnify the claim petition 1st respondent owner of the tractor and trailer since insured and policy covers the risk, the age of the deceased as per the postmortem report Ex.A.3 is 31 years, the claim under Section 166 of the M.V.Act as per Sarla Varma v. Delhi Transport Corporation² the multiplier 16 is taken and not 17 as taken by the tribunal following old expression, when the law is clearly settled from Sarla Varma supra reiterating by subsequent expressions including larger Bench. Coming to the earnings, the tribunal taken Rs.4,000/- per month from the supervisory loss of about 10acres the deceased was possessing since succeeded by the claimants for no total loss but for the supervision, there is nothing to reduce the said amount much less to increase therefrom. If 1/ 4th deducted for the claimants are 5 in number, it comes to Rs.3,000/-x12x16=5,76,000/- besides Rs.50,000/- towards consortium to the 1st claimant, Rs.25,000/- towards funeral expenses,

² 2009 ACJ 1298

Rs.10,000/- towards loss of estate and Rs.20,000/- towards care and guidance of two minor children in all comes to Rs.6,81,000/- out of which, 60% liability of the claim petition respondents 1 and 2 comes to Rs.4,08,600/-. Thereby the liability of the respondents 1 and 2 is reduced from Rs.5,56,000/- to Rs.4,08,600/-.

6. In the result, appeal is allowed in part by reducing the compensation of Rs.5,56,000/- awarded by the tribunal to Rs.4,08,000/- against respondents 1 and 2, however by confirming the rate of interest at 7.5%p.a. from date of claim petition till realization. Rest of the award holds good. No costs. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 21.09.2016
Vvr

