

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

C.M.A.No.135 OF 2003

JUDGMENT:

The 3rd respondent-Insurer among the three respondents including the driver and owner of unregistered Tractor Mahindra 275 DI bearing Engine No.16246, maintained the appeal impugning the award of the tribunal dated 27.06.2002 in O.P.No.379 of 1999 on the file of the learned Chairman, Motor Accidents Claims Tribunal-cum-III Addl.District Judge, Karimnagar(*for short, 'Tribunal'*), filed under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), by the 4 claimants, no other than the wife, mother and two minor children of the deceased by name Ravinder, aged about 29years who died while proceeding by sitting on the mudguard of the tractor due to rash and negligent driving of its driver, fell down and ran over by the rear wheel of the tractor, for a claim of Rs.1,50,000/- since arrived originally of Rs.1,83,960/- but restricted to as prayed for with interest at 9%p.a. by fixing liability against three respondents; preferred this appeal contending that the deceased was unauthorized passenger of the tractor with no seating capacity but for a driver only much less to sit on the mudguard and as an unauthorized passenger, there is no coverage of risk under the policy and once there is no coverage of risk as also held by this Court that even for a claim u/ sec. 140 of the M.V.Act on no fault it must be shown not only involvement of the vehicle in use resulting the accident but also coverage of risk by policy in United Indian Insurance Company Limited Vs. Beebawwa¹ and thereby the award of the tribunal fixing liability on the insurer is unsustainable and the tribunal ought to have exonerated

¹ laws APH (2014) 11 page 34

the Insurer thereby to allow the appeal. The appellant reiterated the same by referring to the expression *supra*.

2. Whereas, it is the contention of the learned counsel for the claimants that the tribunal having fresh in mind, came to a right conclusion, for this Court while sitting in appeal there is nothing to interfere. Hence, to dismiss the appeal.

3. Heard and perused the material on record.

4. The manner of the accident as shown in the claim petition vis-a-vis the evidence as considered by the tribunal covered by the impugned order is crystal clear that the deceased was travelling by sitting on the mudguard of the new tractor in the question after the same was insured duly with the 3rd respondent-appellant. It is in the course of driving due to the negligent driving of the driver of the tractor and with the contribution by the deceased if any, he fell down but the death is not resulted from such fall being unauthorized passenger but after fall from the tractor on the earth when he became a third party since ran over by the tractor. Undisputedly the act policy even covers the risk of third party. Had the deceased not travelled by sitting on the mudguard as unauthorized passenger, the accident could not have been occurred thereby there is 50% liability on the deceased even taken and the remaining 50% liability to be fixed on the owner and Insurer is just thereby what the compensation awarded by the tribunal is no way excessive from the 50% liability by the 4 claimants from the age of the deceased, date of accident and estimated earnings of the deceased from the entitlement of other conventional sums. Having regard to the above, there is nothing to interfere with the quantum arrived by the tribunal.

5. In the result, appeal is disposed of by confirming the compensation modifying the liability to the extent of 50% by the respondents (driver, owner and Insurer) and the other 50% by the claimants however by reducing the rate of interest from 9%p.a. to 7.5% p.a. 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: 26.09.2016
Vvr

