

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA MP No.206 OF 2012

IN/AND

MACMA No.691 OF 2016

JUDGMENT:

The second respondent/ insurer among the two respondents including the owner of tractor and trailer bearing No.AP 21 W 2124 and 2125 in the claim maintained by the parents of the deceased, by name Palle Ratnakar Reddy, under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for Rs.4,00,000/- for the alleged negligent parking in the middle of the road, the accident occurred on 04.11.2006 at 10.p.m. near Venkatreddypalli bus stop within the limits of Tadipatri PS and the Tribunal having held that the accident was the result of negligent parking of the tractor and trailer without parking lights or any precautions and the Tribunal therefrom, considering the age of the second claimant about 45 to 50 years, awarded compensation, in all, Rs.2,57,000/- with interest @ 7.5% per annum, the insurer maintained the present appeal with the delay of 38 days with the contentions in the grounds of appeal that the Tribunal gravely erred in not considering the alleged stationed tractor on the left side of the road, in saying as if parked in the middle of the road, further though the deceased was negligent while riding bike even in the headlights of the bike/ the said stationed vehicle and had he been with diligence, he could avert the accident, and thereby sought for exoneration of the insurer by set aside the award of the Tribunal fixing liability on the respondents.

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02. The claimants/ respondents 1 and 2 to the appeal served, failed to attend. The first respondent, who remained exparte before the Tribunal, even impleaded in the appeal as respondent No.3, dismissed for default, no way fatal to the appeal vide expression of the Apex Court in **Meka Chakra Rao v. Yelubandi Babu Rao @**

Reddemma And others ^[1] .

03. The reasons assigning for causing the delay in filing the appeal are administrative delay in processing the file for appeal. Accordingly, the delay is condoned.

04. The appeal is taken up for hearing.

05. Heard learned counsel for the appellant/ insurer and taken as heard the respondents 1 and 2/ claimants, who did not choose to appear. Perused the material on record.

06. Even taken for the arguments sake of any negligence of the deceased - bike rider also, there when the main negligence is from the stationed tractor and trailer on the middle of the road without blinking lights and with necessary precautions and even there from there is up to any 25% composite negligence on the deceased to avert the accident, for had he been diligent, the accident could be averted. The tractor driver, owner and insurer are liable for 75% liability.

07. Coming to the compensation awarded by the Tribunal is excessive or not concerned, what the Tribunal awarded of Rs.2,57,000/- with interest 7.5% per annum no way excessive even for 75% negligence supra, but for no cross objections to enhance.

08. Having regarding to the above, MACMA MP No.206 of 2012 is allowed and the appeal is dismissed with no costs.

09. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

04.02.2016
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^[1] 2002 ACJ 828