

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.4686 of 2008

JUDGMENT:

The 2nd respondent-insurer among two respondents including owner of the lorry bearing No.KA 02 6927, impugning the award of the tribunal dated 18.08.2005 in M.V.O.P.No.57 of 2001 maintained by the claimant for the injuries sustained, while he was travelling in the lorry on 03.01.2000 under Section 166 of the Motor Vehicles Act (for short 'the Act') for a compensation of Rs.1,00,000/- since awarded of Rs.53,000/- with interest at 9%p.a. maintained the appeal impugning from award in support of the contentions before the trial Court that the trial Court ought to have considered that the injured is an unauthorized passenger of the goods vehicle and what he claimed of he was carrying on in the lorry at the time of accident 4 or 5 boxes of vegetables, as a similar contest by more than 12 unauthorized passengers travelling in the lorry even from perusal of the F.I.R, charge sheet, petition averments and award of the tribunal and tribunal ought to have exonerated for there is no liability on the insurer for no additional premium paid and thereby the Act policy under Section 147

of the Act does not extend to cover the risk of passengers in a goods vehicle.

2. The 1st respondent, who is insurer though served failed to attend and for the 2nd respondent-owner of the vehicle remained ex parte before the tribunal, it is submitted not a necessary party to the appeal.

3. Heard and perused the material on record.

4. In fact from the very undisputed averments covered by the award of the tribunal with reference to F.I.R. and charge sheet even show more than 10 or 11 persons were carrying with respective vegetables in the lorry. No doubt, under Section 147(1) proviso even under act policy only one person is entitled to travel on behalf of owner or representative of the goods and not others. There is already one death claim and the others are injured including the claim petitioner herein. However, the manner of accident from the very F.I.R. and charge sheet shows the injuries sustained is after fallen from the vehicle and load on the vehicle on the injured. The law is settled that though person is travelling as an unauthorized passenger, the moment he falls, he is a third party and it is after his fall, the load of the vehicle fell on him while in use of the vehicle. To that extent, the insurer is liable to indemnify the owner of the vehicle to the third party to say but for the contribution by

the injured also equally by travelling in the vehicle, he could not have sustained injuries.

5. Having regard to the above, so far as the 50% liability of the insurer to indemnify the owner comes to half of the amount of Rs.53,000/- i.e., Rs.26,500/- and so far as interest, it is to be reduced from 9%p.a. to 7.5%p.a. Out of the amount deposited by the insurer after satisfying the above amount of claimant, the remaining amount if any the insurer is entitled to take back by filing a cheque petition before the tribunal by virtue of this judgment.

6. Accordingly, the appeal is allowed in part. There is no order as to costs.

7. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:17.09.2016
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