

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.751 OF 2006

JUDGMENT:

The 2nd respondent—insurer among two respondents including the driver-cum-owner of auto bearing No.AP 16 V 2128, maintained the appeal impugning the award dated 30.11.2005 passed in M.V.O.P. No.218 of 2001 on the file of Motor Accidents Claims Tribunal-cum-IV Additional District Judge, FTC, Krishna at Machilipatnam, (for short 'the Tribunal') filed by the injured claimant, under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') for a compensation of Rs.4,00,000/- for the injuries sustained in the motor accident occurred on 11/12.04.2001 and since the Tribunal, after contest by the insurer from the owner of the auto remained exparte, awarded of Rs.1,84,000/- with interest at 7.5% per annum fixing joint liability against respondents 1 and 2.

2) It is the contention of the learned standing counsel for insurer that from the very record shows the opposite coming lorry at his negligence and not the auto driver in which the injured was traveling, thereby the lorry owner and insurer are necessary parties and awarding of compensation against 2nd respondent—insurer and 1st respondent—owner to indemnify is unsustainable and prayed to allow the appeal by setting aside the award passed by the Tribunal.

3) Whereas, it is the contention of the learned counsel for claimant that though the claim is to be maintained under Section 163-A of M.V.Act, Section 166 of M.V. Act is also maintainable. As per the settled expressions of the Apex Court once the opposite vehicle number not known and the injured was traveling in the auto of 1st respondent while the vehicle was in use, the claimant is entitled to compensation, hence to dismiss the appeal, for this Court while sitting there is nothing to interfere.

4) Heard learned standing counsel for insurer and learned counsel for respondent No.1. Respondent No.2 owner of the vehicle remained exparte before the Tribunal even impleaded in this appeal, is no way fatal to the maintainability of appeal vide **Meka Chakra Rao vs Yelubandi Babu Rao**¹. Perused the material on record.

5) So far as the quantum of compensation from the permanent disability certificate concerned, there is nothing to interfere.

6) Now coming to the exoneration of liability of insurer and owner of the auto raised in the appeal, even the claim maintained under Section 166 of M.V. Act, once the claim under Section 163-A of M.V Act is maintainable and when the vehicle was in use, the owner and insurer of the vehicle i.e., the passenger auto LMV transport, can be made liable and it is left open for the owner and insurer of the auto to proceed against the driver, owner and insurer of the lorry, if any and their impleadment is no way fatal to the maintainability of the claim as laid down by the three judge bench expression of the Apex Court in **Khenyei vs New India Assurance Company Limited**².

7) Having regard to the above, but for to observe such a remedy is left open to the insurer, there is nothing to interfere with the award of the Tribunal.

8) Accordingly and in the result, the appeal is dismissed. No order as to costs.

9) Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.08.09.2016
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¹ 2001 (1) ALT 495 DB

² 2015 (9) SCC 273

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