

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.4573 of 2004

JUDGMENT:

The claimants, who are wife, children and parents of deceased Anthareddy Laxmaiah, maintained O.P. No.159 of 2001 on the file of Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nizamabad (for short 'the Tribunal') against the owner and insurer of lorry bearing No.ADM 8155 for a compensation of Rs.6,50,000/- for the accidental death of deceased Anthareddy Laxmaiah in the accident occurred on 03.11.1999. On contest, the Tribunal dismissed the claim in toto. Impugning the same, the claimants preferred an appeal.

2) Heard learned counsel for the appellants/ claimants and learned standing counsel for insurer. Learned counsel for appellants submits that the respondent No.1 owner of the lorry remained *exparte* before the Tribunal even impleaded in this appeal, he is not necessary party vide *Meka Chakra Rao vs Yelubandi Babu Rao*¹ and the same is recorded. Perused the material on record.

3) There is no doubt as to the manner of accident and involvement of the lorry. Undisputedly, the deceased was traveling in the jeep bearing No.MH 26 C 0083 even from the claim petition averments vis-à-vis Ex.C2— scene observation indicate that there is composite negligence practically of both the vehicles, the Tribunal by saying it is impossible to believe of the rear side portion of the jeep was damaged if the lorry was really coming in opposite direction and it is falsely planting a lorry.

4) Even opposite coming vehicles proceeding speedily passing through with a hair line gap between them and unable to maintain the speed

¹ 2001 (1) ALT 495 DB

and proving of 40%possibility of both vehicles coming in contact, resulting the accident, that too, when the deceased sat on the right rear side of the jeep.

5) At this stage, the learned counsel for claimants seeking permission of the Court to remand the matter for which the learned counsel for 2nd respondent stated no objection but for not to consider practically of the matter requires remand as claimants want to implead the driver, owner and insurer of the jeep as co-respondents by drawing the attention of the Court under Section 168 of M.V.Act and respondents' liability can also be fixed by the Tribunal though otherwise impleaded of one is enough, since claimants themselves seek for recourse, thereby to set-aside the dismissal award passed by the Tribunal and the matter is remitted to the Tribunal permitting the claimants to implead the driver, if any, owner and insurer of the jeep as co-respondents and after receiving their counters and giving opportunity of further evidence by both sides for recalling for said owner and insurer and the witness already examined to decide afresh.

6) In the light of the observations supra, the appeal is allowed and remanded. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.12.09.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.4573 of 2008



Date: 12.09.2016

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