

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.245 of 2010

JUDGMENT:

The respondents 2 and 3-insurer among three respondents including owner of the tractor-trailor bearing Nos.AP 36V 2315 and 2316, maintained the appeal impugning the award of the tribunal dated 18.02.2009 in M.V.O.P.No.629 of 2007 filed by claimant under Section 166 of the Motor Vehicles Act (for short 'the Act'), for a compensation of Rs.1,20,000/-, from the contest by the insurer for the 1st respondent-owner remained ex parte, since awarded with joint liability of Rs.25,000/- with interest at 7.5% p.a., impugning fixing of joint liability on the insurer.

2. The learned counsel for the insurer reiterated the same in the course of hearing.

3. Whereas, it is the submission of the learned counsel for the 1st respondent/claimant that the award of the tribunal holds good and for this Court while sitting in appeal there is nothing to interfere and hence to dismiss the appeal.

4. Heard and perused the material on record.

5. Ex.B1 is an Act Policy. Undisputedly, there is no additional premium paid much less covering the risk of 6 coolies, apart from the permit and policy are only for

agricultural purposes. There is no any evidence much less oral even of the vehicle while in use for agricultural purposes and for such purpose of attending of the goods, the injured was travelling in the said vehicle at the time of accident, even to cover an Act Policy as per the provisions of clauses 1(a) to (c) of Section 147 of the Act, for no additional premium paid under the proviso (II) of the Act. Once such is the case, the tribunal gravely erred in fixing joint liability on the insurer, instead of exoneration.

6. The law is fairly settled that once any amount deposited by the insurer and permitted to withdraw and the claimants have withdrawn, to that extent not to recover by the insurer from the claimants but from the owner of the vehicle.

7. Coming to the quantum, the evidence of PW.2 with reference to Ex.A3-injury certificate shows that the injured sustained two contusions, two abrasions and one fracture of right scapula. Hence, the claimant is entitled to Rs.28,000/- towards pain and sufferance and Rs.12,000/- towards medical expenses, loss of earnings, extra nourishment and transport charges to say Rs.40,000/- is the just compensation to enhance from Rs.25,000/-

8. Having regard to the above, the appeal is allowed by setting aside the award fixing joint liability and by

exonerating the insurer in holding that the insurer cannot be made liable. However, half of the amount of Rs.25,000/- with interest if any deposited by the insurer while filing the appeal, that was pursuant to the direction of this Court on 25.09.2009 in permitting withdrawal of the amount by the claimant without furnishing security, since stated withdrawn, to that extent the claimant is not liable but for the insurer to recover from the owner. In other aspects, for the balance as per the award, the claimant has to proceed against the appeal 2nd respondent-owner of the vehicle i.e. claim petition 1st respondent-owner. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:25.10.2016
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