

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.377 of 2010

JUDGMENT:

The claimant is no other than husband of the deceased by name, Shivamma, aged about 22 years or so, died of the accident dated 28.08.2006, while travelling in the trailer propelled to the tractor with load of stones of the 1st respondent bearing No.AP 21T 67 insured with the 2nd respondent in claiming compensation of Rs.2,50,000/- under Section 166 of the Motor Vehicles Act (for short 'the Act'), and from the owner remained ex parte, contested by the insurer saying it is an agricultural purpose and the vehicle is not in use for agricultural purpose and the policy not covered the risk of any passengers or persons, who travel on the load and thereby the deceased was an unauthorized passenger and insurer cannot be made liable. However, fixed joint liability in awarding compensation of Rs.1,99,000/- with interest at 9%p.a., on 20.02.2009 in MVOP No.83 of 2007 and maintained the appeal, with the contentions that the tribunal gravely erred in fixing joint liability instead of exonerating the insurer, even the deceased was an unauthorized passenger in the goods carriage and evidence of R.W.2 and R.W.1 r/w. Ex.B1-terms and conditions and Ex.X1-registration extract are

clear, thereby to set aside joint liability by exonerating the insurer, apart from the compensation awarded is excessive so also rate of interest.

2. Learned counsel for the appellant-insurer reiterated the same.

3. Whereas, it is the submission of the learned counsel for the claimants 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. Heard and perused the material on record.

4. So far as rate of interest at 9% p.a. concerned, it is required to reduce to 7.5% p.a. as per *Rajesh Vs. Ranbir Singh*¹ and *TN Transport Corporation v. Raja Priya*².

5. Coming to the quantum of compensation, it is just to decide the liability of the insurer. No doubt, Ex.B1-policy and the evidence of RW.1 shows, it is an agricultural package policy but no additional premium for any coolies including for loading and unloading collected even to travel on the load of stones, it is rightly contended that the deceased was an unauthorized passenger on the goods. However, the fact remains, it was while taking the load of stones with the deceased by the driver of the tractor-trailor of the

¹ 2013 ACJ 1403

² (2005) 6 SCC 236

1st respondent from the trailer propelled to the tractor was turtled down and from fall of the deceased and thereafter the fall of the stones on her with the loaded trailer, she was succumbed. The moment she fell down, becomes a third party. Once such is the case, 40% liability on the negligence contributed by deceased can be taken and 60% liability can be fixed on the insurer, as merely fall could not be resulted her death but for trailer with stones fallen thereafter in causing the death.

6. Coming to the quantum of compensation, from the age of the claimant shown about 25 years, the multiplier even taken of '17' as per *Sarla Verma v. Delhi Transport Corporation*³, from the earnings of the deceased claimed as Rs.75/- per day, even taken Rs.2,200/- p.m., and half of the amount is deducted towards personal expenses of the deceased, it comes to Rs.1,100/-p.m. and Rs.13,200/- p.a. and the same is multiplied with the multiplier '17' (applicable from the age of the deceased), it comes to Rs.2,24,400/-. Apart from it, the claimant is entitled to Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate. Thus, in total, the claimant is entitled to Rs.3,09,400/- and 60% of the same

³ 2009 ACJ 1298

comes to Rs.1,85,640/- rounded to Rs.1,86,000/-, which is the just compensation.

7. Accordingly and in the result, the appeal is partly allowed while holding that the deceased was an unauthorized passenger, however, the accident was not occurred while travelling as unauthorized passenger, after her fall from the ground would become a third party and from the load of stones in the trailer propelled to the tractor turned turtle and from its fall she succumbed, thereby fixing 60% contribution on the insurer from 40% contribution of the deceased deducted, it comes to Rs.1,86,000/- to be payable with interest at 7.5% p.a. In other respects, the award of the tribunal holds good. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:03.11.2016
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