

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A No.1887 OF 2004

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JUDGMENT:

The 2nd respondent—insurer in O.P. No.740 of 1996 among two respondents including the owner of TVS Suzuki bearing AP 1/C 762 that was while riding by the deceased met with accidental death, from the claim maintained by father, mother and unmarried sister of the deceased by name Venkat Ram Reddy under Section 166 of M.V Act for Rs.1,50,000/- since Tribunal awarded compensation with joint liability of Rs.1,50,000/- as prayed for with interest at 9% per annum, maintained the appeal impugning the award of the Tribunal on various grounds including that the deceased met with accident out of his own negligence and from the vehicle entrusted to him by the 1st respondent—owner of the vehicle in the course of alleged employment and at best it is a claim against the other vehicle of hit and run case, to make a claim as per the special procedure envisaged against the Insurance company before the Special Tribunal, Tahsildar cum MRO.

2) The 1st respondent—owner of the vehicle remained *ex parte* before the Tribunal and even notice sent returned unserved as no such address though it is the self same address that was served in the claim petition apart from the submission by the appellant/ insurer that even though he was impleaded the appeal dismissed for default against him, which is no way fatal to the maintainability of the appeal vide **Meka**

Charadhara Rao vs Yelubandi Babu Rao^[1] and the same is recorded.

3) Whereas it is submitted by the learned counsel for claimants that the 1st claimant, who is father of the deceased died leaving behind the claimants 2 and 3 pending the claim petition and that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere.

4) Heard and perused the material on record.

5) From the very claim petition averments, the deceased was entrusted with the vehicle by the 1st respondent—owner and the deceased, while riding Suzuki of 1st respondent supra insured with 2nd respondent met with death, he is not a third party against 1st respondent—owner to indemnify by 2nd respondent—insurer as a third party claim but for at best from stepping into the shoes of the 1st respondent-owner for not a third party, if at all covered by personal accident claim to approach either District Consumer Forum under the Consumer Protection Act or to seek other alternative remedy and not to maintain the claim petition under Section 166 of M.V Act. Thereby, the same is not maintainable even to treat the same as one under Section 163-A of the Act, for the deceased not a third party to the 1st respondent—owner of the vehicle. Even to say the other vehicle that dashed the Suzuki of the deceased belongs to 1st respondent and ran away unidentified, at best it is a case of hit and run to invoke the jurisdiction of the Special Tribunal under

Sections 161 to 163 of M.V Act. Thus, even to convert the case or to treat the same under Sections 161 to 163 of M.V Act, the United India Insurance Company concerned with the South Indian region to satisfy all such hit and run claims not even impleaded as a party respondent herein. Needless to say whatever the amount permitted while filing the appeal by this Court to deposit by the appellant—insurer and to withdraw by the claimants of Rs.25,000/-, the insurer cannot recover but for to appraise the United India Insurance company in the event of filing any hit and run claim to adjust the same or if covered by any personal accident claim to adjust the same in satisfying the claim as the case may be.

6) Accordingly, the appeal is allowed to the above at extent indicated, by setting aside the award of the Tribunal holding that the appellant/ insurer cannot be made liable for any amount much less to indemnify the respondent—owner of the Suzuki by maintaining the claim petition under Section 166 of M.V.Act or 163-A of M.V Act. There is 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.01.07.2016

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date:01.07.2016

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