

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A. No.673 of 2010

JUDGMENT :

The 2nd respondent-insurer, among the two respondents, including the owner of the lorry bearing No.AP 13 V 9114, maintained the appeal impugning the award dated 29.04.2008 in O.P.No.51 of 2003 on the file Motor Accident Claim Tribunal-cum-V-Additional District Judge, Mahabubnagar, under Section 166 of the Motor Vehicles Act (for short, 'the Act') for a compensation of Rs.3,00,000/- for the death of A. Gattaiah, which is maintained by the wife, three minor children and parents of the deceased and from the contest by the insurer, though the owner remained ex parte, the Tribunal having held that the accident was the result of the rash and negligent driving of the driver of the lorry of the 1st respondent, awarded the compensation of Rs.2,11,500/- with interest at 7.5% per annum.

2. The contentions in the grounds of appeal by the insurer are that the Tribunal ought to have seen the claimants could not maintain the claim under Section 166 of the Act and there is no negligence of the driver of the lorry that resulted the death of the deceased-driver of another lorry and the multiplier adopted is wrong and also the quantum of compensation is excessive, hence to reduce it, so also rate of interest.

3. Whereas, it is the submission of the learned counsel for the claimants that, but for no cross-objections, to grant compensation as prayed for.

4. Heard and perused the material on record.

5. The manner of accident from the claim petition averments vis-à-vis Ex.A.1-F.I.R shows that on 04.12.2002 at N.H.No.7 near Dharmavaram village, the lorry bearing No.AP 13 V 9114 with wood load proceeding towards Kurnool, in front of lorry bearing No.TN 33 5 1999, dashed in back side of the lorry bearing No.KA 01 6900 and the deceased who was the driver of the lorry bearing No.AP 13 V 9114 received bleeding injuries and died on the spot. The 1st respondent is the owner of the lorry bearing No.AP 13 V 9114. It is in the course of employment when the deceased died, the owner of the lorry and the insurer are liable even from the act policy from reading of Section 147 of the Act. Though the claim can be maintained under Workmen Compensation Act, it is open to maintain a claim under that W.C.Act or M.V.Act from the very wording of Section 167 of the Act. The fact that the other vehicles, if at all to be implicated, not implicated, no way a ground for the insurer to exonerate from the liability, but for if at all to proceed against the other vehicles owners and insurers for contribution as laid by the Apex Court expression in **Khenyei v. New India Assurance Company Limited and others**¹.

¹ 2015 (9) SCC 273

6. Even coming to the quantum of compensation what the Tribunal awarded of Rs.2,11,500/- with interest at 7.5% is utterly low, but for no cross-objections of the claimants, who are six in number are dependants of the deceased to enhance, the appeal can be dismissed.

7. Accordingly, the appeal is dismissed.

8. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

15th December 2016.

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Dr. B. SIVA SANKARA RAO, J

