

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.1819 OF 2006

JUDGMENT:

The 2nd respondent—insurer among two respondents, including the owner of the lorry bearing No.AP 9 V 1164 in O.P. No.897 of 2003 on the file of Principal Motor Accidents Claims Tribunal, Nalgonda District (for short 'the Tribunal') which was maintained by claimants, who are wife and children of deceased Ch.V.Subramanneshwar, for the accidental death of Ch.V.Subramanneshwar in the motor accident occurred on 29.06.2003, under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') for a compensation of Rs.2,50,000/- with interest at 7.5% per annum, on contest, the Tribunal having held that the accident was the result of rash and negligent driving of driver of the lorry of 1st respondent insured with 2nd respondent, wherein the deceased was traveling along with the goods, awarded compensation of Rs.2,48,000/- with interest at 8% per annum from the date of filing of O.P i.e., 10.10.2003 till date of award and at 5% per annum from the date of award till realisation by fixing joint liability to the extent of pay and recovery on the insurer. It is impugning the same, the insurer maintained the appeal with contentions that the deceased was unauthorized passenger and the Tribunal erred in awarding compensation by fixing the liability to indemnify the owner of the vehicle instead of exonerating the insurer apart from the quantum as excessive and thereby sought for allowing the appeal.

2) Whereas it is the contention of the learned counsel for claimants that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere, but for no cross

objections to enhance the compensation and prayed to dismiss the appeal.

3) Heard both sides and perused the material on record.

4) There is nothing on record to show that the deceased was traveling with any goods and what are the goods, but for a stray sentence as he was travelling with goods. No scene of observation even filed, much less nothing indicating from Exs.A1 and A5—FIR and charge sheet.

5) It is from the contention of the insurer that the deceased was unauthorized passenger, that was not properly considered by the Tribunal. However, the fact remains that the accident was not occurred while the deceased was traveling, but for from the lorry turned turtle due to the alleged negligent driving of the driver of lorry of 1st respondent and therefrom the deceased fell down and crushed under the lorry fallen on him, that is also clear from the perusal of Ex.A3—post mortem report. Once such is the case, though he was unauthorized passenger, the moment he fell down, he is a third party. Once he became a third party, the act policy covers the risk. However, the fact remains that, but for the deceased travelled as unauthorised passenger, the accident could not have been occurred. Thereby, there is 50% contribution by the deceased and 50% liability for the insurer to indemnify the owner under the policy coverage.

6) Coming to the quantum awarded by the Tribunal of Rs.2,48,400/- with interest at 8% per annum from the date of petition till the date of award and at 5% per annum from the date of award till realisation, is excessive and as per Ex.A2—inquest report and Ex.A3—PME report, the deceased was shown as 49 years, as the claim is made under Section 166 M.V Act, the multiplier applicable is '13'. There is

no proof of earnings for the accident dated 29.06.2008. Even as per ***Latha Wadhwa vs State of Bihar***¹ in the absence of proof of earnings, minimum of Rs.3,000/- per month has to be taken, therefore, the income of the deceased has to be taken at Rs.3,300/- per month, if 1/3rd deducted towards personal expenses it comes to Rs.2,200/-, the loss of dependency arrived at Rs.3,43,200/- (Rs.2,200/- X 12 X 13). Apart from it, Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, in all it comes to Rs.4,28,200/- and 50% therein comes to Rs.2,14,100/- and what the Tribunal awarded of Rs.2,48,400/- is reduced to Rs.2,14,100/-. However, with uniform interest at 7.5% per annum from the date of petition till realisation.

7) Accordingly and in the result, the appeal is partly allowed by reducing the quantum from Rs.2,48,400/- to Rs.2,14,100/- with interest at 7.5% per annum from the date of petition till realisation. In other respects the award of the Tribunal holds good. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.21.09.2016
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¹ AIR 2001 SC 3218

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Date:21.09.2016

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