

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.1884 of 2005

JUDGMENT:

The injured claimant of O.P.No.169 of 2004 maintained against the driver, owner and insurer of the lorry bearing No.MP-06-E-2874 in the claim maintained for Rs.2,00,000/-, under Section 166 of Motor Vehicles Act, 1988, since awarded by the Tribunal of Rs.98,600/- vide award dated 05.05.2005, impugning the legality and correctness on the quantum saying as utterly low and ought to have been awarded as prayed for maintained the appeal.

The appeal against the 1st respondent-driver of the lorry even dismissed for default for he remained exparte before the Tribunal, though no way fatal vide decision in **Meka Chakra Rao Vs.**

Yelubandi Babu Rao ^[1]. So far as R.3-insurer who contested before the trial Court even impleaded for non-payment of process, dismissed for default. Thereby without impleading the insurer to indemnify the owner, the appeal maintainability itself is in question. Leave it as it is, the Tribunal awarded Rs.98,600/-. The Tribunal categorically held that the accident was not a road crossing and while proceeding in the straight line the crime lorry coming in opposite direction. No motor vehicle inspection report was filed even to say what were the damages if any caused to the bike to say while the accident was involved when vehicles proceedings in opposite direction or head on collision. The Tribunal having considered that the petitioner has no driving license and his experience to ride the bike itself is in doubt. But his version is that his driving license was lost at the scene of offence is hardly believable as could have been produced any duplicate for obtaining any proof of his possessing license. Leave it as it is, the so called PW.2 set up by him even as per the charge sheet, not an eye witness to the accident of the report given by the owner of the bike and not even by the insurer and also stated that the owner of the bike did not

come to witness box and he is not an eye witness and alleged that driving of the bike to attend calls of nature that also hardly believable when such is the conclusion and that too when given reasonable amount while fixing equal contributory/composite negligence in awarding Rs.98,000/- from the operation of the decree and result of the award i.e., even impugning by the insurance company for this Court while sitting in the appeal, there is nothing to interfere.

Accordingly, the M.A.C.M.A. is dismissed.

Consequently, miscellaneous petitions, if any shall stand dismissed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 24.06.2016
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[\[1\]](#) 2001 (1) ALT 495