

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CMA No.4211 OF 2004

JUDGMENT:

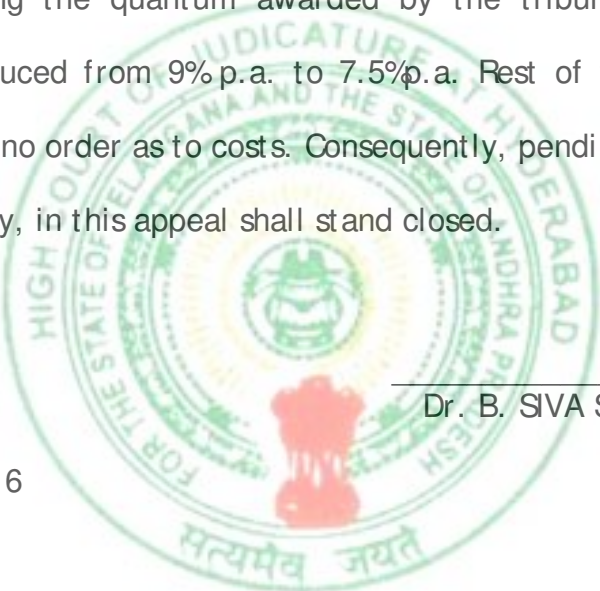
The 3rd respondent-Insurer among the three respondents including driver and owner of the tipper bearing No.AP-16-W-4485 in O.P.No.997 of 98 filed under Section 166 of the Motor Vehicles Act (for short, 'the M.V.Act'), on the file of the learned Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Khammam (*for short, 'Tribunal'*) for a claim of Rs.1,00,000/- by the appeal 1st respondent as sole claimant for the injuries sustained by him in the motor accident dated 13.01.1998 allegedly due to rash and negligent driving of the driver of said tipper and after contest particularly by the Insurer, from the driver and owner of the tipper remained exparte, no rash and negligent driving on the part of the driver of the Tipper for the injuries sustained by the petitioner-Injured but for any of his contribution, the tribunal held that the policy covers the risk of the injured-3rd party from the policy in force was not in dispute and from the multiple injuries sustained by the injured-petitioner, by its award dated 15.09.2003, granted of Rs.57,300/- with interest at 9% p.a. by fixing liability on all the respondents including the Insurer, it is impugning the same, the present appeal is filed by the Insurer contending that the petitioner is one of the passengers and unauthorized passenger of the goods vehicle and the claim is excessive.

2. During the course of arguments, the learned counsel placed reliance on Judgment in M.A.C.M.A.No.2831 of 2011 of single judge of this Court in which referred to MACMA No.1389 of 2011 and batch cases covered by the same accident wherein it was held that the injured was travelling along with others by paying to cleaner and consequently they were all gratuitous passengers and by applying the judgment of the Apex

Court in **New India Assurance Co. Ltd. v. Asha Rani**¹, the Insurer was exonerated.

3. The facts of the case supra no way apply to the facts of the case on hand as it is the specific case of the petitioner that he was cyclist and the 3rd party to the crime vehicle which allegedly dashed him and the same is the finding of the tribunal from the evidence on record of P.W.1 injured and also P.W.2 doctor, hence there is nothing for this Court to interfere with the award of the tribunal while sitting in appeal.

4. Accordingly and in the result, the appeal is allowed in part while upholding the quantum awarded by the tribunal, the rate of interest is reduced from 9%p.a. to 7.5%p.a. Rest of the award holds good. There is no order as to costs. Consequently, pending miscellaneous petitions, if any, in this appeal shall stand closed.



Dr. B. SIVA SANKARA RAO, J

Date: 17.08.2016
Vvr

¹ (2003) 2 SCC 223