

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.287 of 2010

JUDGMENT:

The 2nd respondent—insurer of the auto bearing No.AP 26 E TR 018 which belongs to 1st respondent to the claim petition, maintained the appeal, against four respondents including 1st respondent—claimant and 2nd respondent—owner of auto bearing No.AP 26 E TR 018, 3rd and 4th respondents, owner and insurer of other auto bearing No.AP 26 1 8204, impugning the award dated 28.10.2009 in M.V.O.P. No.166 of 2005 on the file of Motor Accidents Claims Tribunal-cum-V Additional District and Sessions Judge, Tirupati (for short 'the Tribunal') for awarding compensation of Rs.145,000/- only against respondents 1 and 2 by exonerating the claim petition respondents 3 and 4.

2) The contentions in the grounds of appeal vis-à-vis oral submissions made by the learned standing counsel for insurer are that the award of the Tribunal is contrary to law and outcome of ill appreciation of the evidence and should have seen that both drivers are at fault besides the injured while sitting on the back side of the auto on the right side of the iron rod but for that the accident could not be and went wrong in fixing contribution to the owner and insurer of other vehicle but for not fixing liability on the auto in which the injured was travelling, hence to set-aside the award fixing joint liability against respondents 1 and 2 and also to fix liability against all respondents including the claimant.

3) Whereas it is the submission of the learned counsel for respondent—claimant that the award of the Tribunal holds good, for this Court while sitting in appeal there is nothing to interfere.

4) Heard learned standing counsel for appellant—insurer, learned counsel for respondent—claimant and learned standing counsel for 4th respondent. Even notice served on respondents 2 and 3 not chosen to attend hence taken as heard. Perused the material on record.

5) A perusal of the Ex.B4—photos show the injuries sustained is mandible and it was from head on collision, the injured sat on the back side of the auto on the right side of the iron, which is overloading against the seating capacity of 5 + 1 and Ex.A2—charge sheet filed against both drivers as contributed to the accident and with regard to manner of accident, resulting injuries to petitioner.

6) The evidence on record once clearly establishes that the auto in which the injured was travelling also contributed to the accident for the above reasons, fixing of liability only against the other auto, by the Tribunal is unsustainable, thereby though the major contribution is from the other side auto apart from the fact that injured was also careless in putting his head beyond the auto and the driver of the auto in which he was traveling could have been cautioned and taken care of.

7) Having regard to the above, the Tribunal ought to have fixed atleast 40% liability on the auto in which the injured was travelling besides for the remaining 60% liability on the opposite auto i.e., respondents 1 and 2 to the claim petition.

8) Accordingly and in the result, the appeal is partly allowed, from the scope of Section 168 of M.V Act and from the evidence on record, while upholding the compensation awarded by the Tribunal in all respects, modifying the joint liability into 40% on respondent Nos.3 and

4 to the claim petition and remaining 60% on the respondent Nos.1 and 2 to the claim petition. No order as to costs.

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

Dt.22.11.2016
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Dr. B. SIVA SANKARA RAO, J



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Date:22.11.2016

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