

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.438 of 2010

JUDGMENT:

The injured claimant aged about 35years, stated working as cooli earning of Rs.3,000/- per month, maintained a claim in M.V.O.P.No.810 of 2006 on the file of Motor Vehicles Accidents Claims Tribunal-cum-Principal District Judge, East Godavari district, (for short 'the Tribunal') under Section 166 of the Motor Vehicle Act, 1988 (for short 'M.V. Act') initially for compensation of Rs.1,00,000/- later amended to Rs.2,00,000/- against the driver, owner and insurer of the lorry bearing No.AP5V 9443 for the injuries sustained by him in the motor accident with the averments that on 31.05.2006 while the claimant was proceeding as a cooli in the lorry supra to Gangannametta, near Chittoor along with its driver-the 1<sup>st</sup> respondent, its cleaner and another cooli Pangji Hari, when the lorry crossed Forebhai camp village, due to rash and negligent driving of the driver he lost control as a result, the lorry turned turtle due to which Pangji Hari who sat on the top of the lorry submerged in the fly ash and died on the spot and the claimant received grievous injuries i.e. fracture of left femur and the claimant on 01.06.2006 admitted in Government hospital, Khammam where P.W.2 Dr.T.Madhan Singh Civil Assistant Surgeon, Orthopaedic, conducted surgery by inserting nail or rod and he was discharged on 15.06.2006. On contest by the Insurer-3<sup>rd</sup> respondent from the respondents 1 and 2 remained exparte, the tribunal by its award dated 17.11.2009 granted compensation of Rs.2,00,000/- with interest at 7.5% p.a. by fixing liability against 2<sup>nd</sup> respondent (owner of the crime vehicle) and exonerating the Insurer by disbelieving the Ex.B.2 policy which is silent about coverage of any coolies but for driver only.

2. Impugning said award, the claimant preferred present appeal contending that the tribunal erred in fixing liability against the owner instead

of the Insurer of the vehicle without any basis ignoring the evidence. During the arguments, the claimant reiterated the same.

3. On the other hand, none appeared for the respondents. Perused the material on record.

4. Coming to the very manner of accident, it is from the rash and negligent driving of the driver of the lorry which turned turtle and the injured fell down along with one Pangi Hari (another cooli who died on the spot) and received grievous injuries since the load fell on them. It is very clear that the injured was taken by the owner for employment of loading and unloading. There is no permit to sit and no policy coverage to travel even for loading and unloading for act policy not covers. The injuries are not from mere fall and after fall he became a third party. However, in the present set of facts from what is referred supra, the injured though unauthorized passenger initially but after fallen from the vehicle, he became third party as per the expressions in *Thoznilalar Transport Company vs Valliammalal*<sup>1</sup> *A.Subramani vs Mani*<sup>2</sup> *NIC vs Savithri Devi*<sup>3</sup> *Oriental Insurance Company Limited vs. Edward D'Cruz Rodrigues*<sup>4</sup>, *United India Insurance Company Limited vs Kurva Yejju Mallamma*<sup>5</sup>. The negligence of the injured appellant therefrom even taken to 50% and the other 50% the Insurer is made liable.

5. Coming to the quantum, what P.W.2, Civil Assistant Surgeon of Government Headquarters hospital, Khammam, of the femur fracture despite insertion of K-Nailing with bed rest for some time found mal-union. A perusal of the Ex.A.4 disability certificate issued is not in fact showing for medico-legal purpose though tribunal placed reliance on it. Even from that evidence taken disability 25% by estimated his earning Rs.3,400/- per month with

<sup>1</sup> 1990 ACJ 201 (Madras)

<sup>2</sup> 1990 ACJ 37 (Madras)

<sup>3</sup> 1991 ACJ 1991 (delhi)

<sup>4</sup> 1995 ACJ 1106 (Bombay and Panaji)

<sup>5</sup> 2007 (3) ALT 366 AP

multiplier 15, it comes to Rs.850/- x 12 x 15= Rs.1,53,000/- besides Rs.20,000/- for the fracture injury, Rs.2,000/- for the simple injury and Rs.25,000/- for medical expenses, loss of earnings, attendant charges, transport charges and extra nourishment is awarded, what the tribunal arrived of Rs.2,00,000/- is justified and 50%therein comes to Rs. 1,00,000/- .

6. Accordingly and in the result, the appeal is partly allowed by modifying the liability fixed by the tribunal on the owner to Insurer, to indemnify the owner to pay 50% liability of Rs.1,00,000/- (out of Rs.2,00,000/-) arrived as above with interest at 7.5%p.a. from the date of petition till realization. There is no order as to costs. Consequently, pending miscellaneous petitions, shall stand closed.

Date:24.11.2016  
Vvr



Dr. B. SIVA SANKARA RAO, J