HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.2388 of 2013

JUDGMENT:

The respondent Nos.2 & 3-insurer among the 3 respondents including 1st respondent-owner of the tractor-trailer bearing Nos.AP-36-V-127/128, impugning the award of the Tribunal dated 13.08.2013 in O.P.No.407 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Warangal, maintained by the 3 claimants no other than parents and sister of the deceased Sudhakar aged about 20 years as per Ex.A7-identity card issued by the Government Degree College, Mulug, where he was studying mentioned date of birth as therein as on the date of accident so to mention, for the accidental death on 03.01.2006 while travelling on the load of Paddy on the trailer propelled to the tractor in the claim maintained under Section 166 of the Motor Vehicles Act (for short 'the Act') for a compensation of Rs.7,35,000/-, from the contest by the insurer of policy not covers the risk, the insurer cannot be made liable and there is violation of permit and the driver was not having valid driving license, held the accident was the result of the rash and negligent driving of the driver of the tractor-trailer, in awarding compensation of Rs.2,67,000/- with interest @ 6% per annum, maintained the appeal.

The contentions in the grounds of appeal vis-à-vis the oral submissions of the learned counsel for the insurer are by reiterating the above saying that the Tribunal gravely erred in not considering several contentions raised by the insurer and went wrong in fixing joint liability instead of pay and recovery or total exoneration and there is no coverage of risk of policy and driver has no valid driving license and there is no valid permit for commercial purpose, hence to allow the appeal exonerating the insurer. Whereas it is the submission of the learned counsel for the claimants that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere.

Heard and perused the material on record.

As answered by this Court today in MACMA.No.841 of 2010, the trailer propelled to the tractor answer the meaning of goods carriage under Section 2(14) of the Act. Now coming to the contentions that the deceased was travelling as owner of the goods having engaged the vehicle belongs to the 1st respondent for taking paddy from the fields to the market though in the claim petition averments the taking of the paddy to the market is silent from the evidence on record of PW.2-father of the deceased is crystal clear. The tractor-trailer got only agricultural permit meant for agricultural operations and policy covers the risk only for that and the purpose for which the vehicle in use is commercial and not covered by the policy. Thus, the deceased was unauthorized passenger in the goods carriage. However, the fact remains that while proceeding on the road along with some coolies, from the rash and negligent driving of the driver of the tractor-trailer to avoid collision lost control from which the deceased fell down and others escaped with injuries, whereas the deceased was succumbed from the trailer with load fallen on the deceased and he died on the spot, Ex.A3-PM report also establishes the same. Thus, though deceased was unauthorized passenger, the death was not as an unauthorized passenger as it is not by fall he died but after fall being a third party, the load of the trailer from turned turtle fallen on him from which he succumbed to the injuries, thereby to that extent, he is a third party and vide **United India Insurance Company Limited Vs. Kurva Yejju Mallamma and Others[1],** the owner is liable with 50% liability.

Now coming to the quantum, the claim is under Section 166 of the Act, among the 3 claimants, sister is not dependent, but parents. The accident was dated 03.01.2006 even the earnings of the deceased is estimated at Rs.3,500/- per month, if half deducted towards personal expenses and multiplier from the age of the parents between 40-45 years is '14' which comes to Rs.1,750/-x12x14=Rs.2,94,000/- + Rs.35,000/- comes to Rs.3,29,000/- rounded to Rs.3,30,000/- and the 50% therein is Rs.1,65,000/- reduced from Rs.2,67,000/-.

Accordingly and in the result, the appeal is partly allowed by modifying the liability from Rs.2,67,000/- to Rs.1,65,000/-, however by enhancing the rate of interest from 6% to 7.5% per annum from date of petition till realization. The respondents shall pay or deposit the balance of any amount deposited. Needless to say if excess already deposited, to take refund or recover.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 13.12.2016
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[1] 2007 ACJ 1735