HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA Nos.750 and 772 OF 2005

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COMMON JUDGMENT:

Aggrieved by the respective awards of the tribunal in O.P.Nos.382 of 2000 and 2290 of 2000, the 3rd respondent-Insurer in both the claim petitions filed two appeals impugning the respective awards and decrees dated 02.12.2004(in O.P.No.382 of 2000) and 31.08.2004 (in O.P.No.2290 of 2000) granting compensation of Rs.1,34,000/- out of Rs.2,00,000/- (in O.P.No.2290 of 2000) and Rs.2,00,000/- as prayed for (in O.P.No.382 of 2000) with interest at 9%p.a. against the respondents 2 to 5 in both the appeals.

2. Heard and perused the material on record. As both the claims arisen out of same accident, these two appeals are disposed of by common judgment.

3. The factual matrix of the two cases arisen out of the same accident are that while the deceased persons were travelling in the auto bearing No.AP 13 U 8808 due to alleged rash and negligent driving of the opposite coming tractor and trailer bearing No.AP 23 T 1061 and 1062, the accident was occurred. Police registered a case with Cr.No.55 of 2000 against the driver of the tractor and trailer for the offence punishable under Sections 304-A and 338 of I.P.C. The auto belongs to the claim petition 2nd respondent and the tractor and trailer belongs to claim petition-1st respondent respectively. The tractor and trailer it appears not shown covered by any policy of insurance but for the auto with the claim petition 3rd respondent (appellant) in both the claim petitions. The evidence of P.W.1 respectively among the claimants is that the accident was result of rash and negligent driving of the auto driver also. The P.W.2 of O.P.No.382 of 2000 by name Bagaiah, set the law in motion and on his report Ex.A.1 First Information Report was registered by police and after investigation

filed Ex.A.2 chargesheet against the driver of the tractor and trailer. Ex.A.4 the M.V.I. report filed in O.P.No.382 of 2000 as Ex.A.4=Ex.A.5 in O.P.No.2290 of 2000 shows there is damage to both the vehicles. It is the contention of the Insurance company supra of the auto before the tribunal in both the claim petitions among the others that the auto driver is not with any negligence and the owner and Insurer of the auto no way be made liable to pay any compensation but for the claim if at all is against the driver, owner and Insurer of the tractor and trailer from the crime registered against the tractor and trailer and police after investigation filed chargesheet against the driver of tractor and trailer.

4. Once the deceased persons were travelling in the auto if they maintain claim u/sec.163-A of the M.V.Act, definitely they can claim compensation if they implead only owner and Insurer of the auto. Here both the claims are filed u/sec.166 of the M.V.Act and it is the evidence on record irrespective of the crime registered and charge sheet filed against the driver of the tractor and trailer, there is contributory negligence on the part of both the drivers. Once the Ex.A.4=Ex.A.5 M.V.I. report also speaks that both the vehicles are at fault from the damage caused to both the vehicles due to head on collusion. The tribunal in fact fixed contribution in the ratio of 50% each in the observations though in the ultimate conclusion, the liability is not apportioned while holding there is head on collusion from both the vehicle drivers are responsible if not contributed to the accident is occurred from their composite negligence. In fixing composite negligence, size of the vehicles, size and width of the road, manner of accident and damage to the respective vehicles is criteria. Here once the tribunal having recorded the evidence and come to the conclusion of there is head on collusion however once size of the vehicle is also criteria and if at all liability to be fixed against the driver, owner, insurer of the auto is not exceeding 40% as the size of the tractor and trailer is when compared to auto bigger apart from the FIR and chargesheet are against the tractor driver.

5. Having regard to the above, the appellant/Insurer of the auto is liable only to indemnify the extent of 40% of the compensation out of what is arrived by the tribunal of Rs.2,00,000/- in O.P.NO.382 of 2000 and Rs.1,34,000/- in O.P.No.2290 of 2000. So far as the rate of interest is concerned the 9%p.a. is reduced to 7.5%p.a. As there are no cross-objections though the compensation awarded is low, this Court has no power to enhance in favour of the claimants but for any necessary apportionment and fixing liability of the Insurer/appellant to that extent. Thus whatever the appellant/Insurer of the auto deposited while filing the appeal and permitted the respective claimants to withdraw, it is for the 40% liability out of the compensation arrived by the tribunal to indemnify the driver-cum-owner of the auto, for the remaining 60% liability is against the owner and insurer, if any, of the tractor and trailer, to make a claim by the claimants to enforce.

6. Accordingly and in the result, both the appeals are allowed in part. Out of the amount deposited by the appellant-Insurer of the auto, if there is any excess amount beyond what is liable for 40% of compensation respectively, the Insurer of the auto is entitled to claim back by filing cheque petition. If there is any deficit still to pay, the appellant-Insurer has to deposit within one month from date of receipt of the common orders, else to execute and recover by the claimants respectively. There is no order as to costs of the appeal.

7. Consequently, miscellaneous petitions, if any pending in these appeals, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:24.06.2016
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