

THE HON' BLE DR. JUSTICE B.SIVA SANKARA RAO

MACMA No.386 OF 2010

JUDGMENT:

The claimants, no other than wife and major daughter of deceased Harim aged about 40 years as per Ex.A.2 postmortem report as on the date of accident 31.05.2006, maintained the claim under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), on the file of the learned Chairman, Motor Accidents Claims Tribunal-cum-(Principal District Judge) East Godavari (*for short, 'Tribunal'*), for a claim of Rs.3,00,000/- against the driver, owner and Insurer of the crime vehicle-lorry bearing No.AP 05 9443, for the death of Harim while proceeding in it for transporting fly ash along with its cleaner and one Pangi Ramakrishna(another cooli), due to rash and negligent driving of its driver/ 1st respondent from turned turtle, as a result said Harim submerged in the ash and died on the spot, on contest by the Insurer, from driver and owner remained exparte and on various grounds including from the evidence through R.Ws. 1 to 3 and Exs. B.1 to B.4, the tribunal held that the deceased was not a cooli in the lorry with load of ash under the owner and also to travel by sitting on the load and there is no permit for the policy and the deceased was unauthorized passenger and discarded the evidence of the R.W.3 investigating officer that at the time of accident one Yedla Chanti under the influence of alcohol was driving the vehicle but not 1st respondent and granted compensation as prayed for by fixing liability only on the driver and owner by exonerating the Insurer.

2. Impugning the said award, the claimants preferred the present appeal with the contentions in the grounds of appeal as well as in the course of hearing that the tribunal erred in exonerating the Insurer from

liability without any basis and to allow the appeal by fixing liability on the Insurer.

3. Heard and 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 load of ash fell on deceased after his fall, due to which he died from asphyxia. It is very clear that the deceased 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 death is 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 deceased though unauthorized passenger initially but after fallen from the vehicle, he became third party as per the expressions in *Thoznilalar Transport Company vs Valliammalal*¹ *A. Subramani vs Mani*² *NIC vs Savithri Devi*³ *Oriental Insurance Company Limited vs. Edward D'Cruz Rodrigues*⁴, *United India Insurance Company Limited vs Kurva Yejju Mallamma*⁵. The negligence of the deceased therefrom even taken to 50% and the other 50% the Insurer is made liable.

5. Coming to the quantum, age of the deceased is above 40 years and as per *Sarla Varma v. Delhi Transport Corporation*⁶ the multiplier 14.5 is applicable and not 15 taken by the tribunal and earnings of the deceased even taken of Rs.3,400/- per month following the expression of the Apex Court in *Latha Wadhwa vs. State of Bihar*⁷, if 1/3rd deducted towards personal expenses, it comes to Rs.2,267/-p.m. x 12 x 14.5= Rs.3,95,400/-.

¹ 1990 ACJ 201 (Madras)

² 1990 ACJ 37 (Madras)

³ 1991 ACJ 1991 (delhi)

⁴ 1995 ACJ 1106 (Bombay and Panaji)

⁵ 2007 (3) ALT 366 AP

⁶ 2009 ACJ 1298

⁷ (2001) 8 SCC 197=AIR 2001 (SC) 3218

Besides Rs. 50,000/- towards consortium, Rs.10,000/- towards loss of estate, Rs.25,000/- towards funeral expenses is awarded, it comes to Rs.4,79,500/- rounded to Rs.4,80,000/- and 50% therein comes to Rs.2,40,000/-.

6. Accordingly and in the result, the appeal is partly allowed by holding that the death is not mere fall as unauthorized passenger but from the fall he became a third party and due to asphyxia from the load of ash fell on him from the lorry turned turtle and thereby even the contribution of the deceased taken 50% and the other 50% (Rs.2,40,000/-) the Insurer to indemnify the owner even from the act policy for the third party 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.

Dr. B. SIVA SANKARA RAO, J

Date: 22.11.2016
Vvr

