

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.499 of 2012

JUDGMENT:

The 2nd respondent-insurer among two respondents including owner of the tractor-trailor bearing Nos.AP 22 TET/ R-8272 and AP 21 T 8394, impugning the award of the tribunal dated 17.11.2011 in M.V.O.P.No.195 of 2010 filed by the four claimants viz., wife, minor child and parents of the [deceased-D. Venkateswarlu@Venkatanna](#), aged about 30 years, under Section 166 of the Motor Vehicles Act (for short 'the Act'), for a compensation of Rs.3,00,000/-, and after contest by the insurer, from the owner remained ex parte, since awarded fixing joint liability of Rs.2,90,000/- with interest at 9%p.a., maintained the appeal.

2. Heard the learned counsel for the insurer-appellant and also the learned counsel for the respondents 1 to 4. The 5th respondent-owner, who remained ex parte before the tribunal, even served failed to attend.

3. The main contention of the learned counsel for the appellant-insurer referring to the expressions of the Apex Court in Sardari v. Sushik Kumar¹, New India Assurance Co. Ltd. V. Vedwati², National Insurance Co. Ltd. V. Prema

¹ 2008 ACJ 1307

² 2007 ACJ 1043

Devi³, M.V.Jayadevappa v. Oriental Fire & Genl.Ins.Co.Ltd.⁴, and Vachala v. V.R.Kumar⁵; that this Court Single Judge expression in Vachala (supra) held that the tractor is with seating capacity of one, meant for the driver, with no seating capacity for any other person, much less, even to travel as owner or attender of the goods or workman for loading and unloading under the owner, for the alleged sand loading and unloading either to travel by sitting on trailer and on the tractor, on seating capacity of one and thereby, no other than unauthorized passenger; that the tribunal gravely erred in fixing joint liability ignoring this fundamental aspect; that the driver also having no valid driving license-light motor vehicle-transport, thereby, the insurer cannot be made liable and that was also not properly considered by the tribunal; that the compensation awarded is excessive and that the rate of interest also to reduce.

4. 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 with the award of the tribunal and hence to dismiss the appeal.

5. Heard and perused the material on record.

³ 2008 ACJ 1149

⁴ 2005 ACJ 1801

⁵ 2006 ACJ 2098

6. The very evidence on record, right from Ex.A1-F.I.R., Ex.A2-Charge sheet and Ex.A4-Post Mortem Report show that the deceased was crushed under the wheels and succumbed. From the evidence of PW.2-eye witness also, it is clear that the deceased while travelling in the tractor-trailor, no doubt, unauthoroizedly, for no seating capacity including from the evidence of RWs.1 and 2 with reference to Ex.B6-extract copy of Registration Certificate, however, the death is not by mere fall from the tractor-trailor but after fall, from the moment he fell became a third party and the deceased was run over under the wheels of the vehicle, to that extent the deceased was a third party. No doubt, but for deceased travelling unauthorizedly, initially, accident could not be occurred, to say, he also contributed and the legal position is very clear from the expressions in Thoznilalar Transport Company v. Valliammalal⁶, A.Subramani vs Mani⁷, NIC v. Savithri Devi⁸, Oriental Insurance Company Limited v. Edward D'Cruz Rodrigues⁹ and United India Insurance Company Limited v. Kurva Yejju Mallamma¹⁰, the contribution of the deceased can be fixed at 40%and the remaining 60% the insurer can be made liable.

⁶ 1990 ACJ 201 (Madras)

⁷ 1990 ACJ 37 (Madras)

⁸ 1991 ACJ 1991 (delhi)

⁹ 1995 ACJ 1106 (Bombay and Panaji)

¹⁰ 2007 (3) ALT 366 AP

7. So far as the contention regarding the driving license is concerned, Exs.B2 and B3 are the notices issued to the owner(claim petition 1st respondent) and he acknowledged and failed to produce the driving license particulars. However, a perusal of Ex.A2-charge sheet shows there is a license and the accused was not booked for not having any valid license under the Motor Vehicles Act and Exs.A5 and B4-Motor Vehicle Inspector's Report, column No.17 is also very clear of license particulars, thereby, it is not a case by summoning the R.T.A. demonstrating the license showing it is imperfect, to order pay and recovery. Hence, the said contention has no force.

8. Now from the above, coming to the 60% liability of the insurer to indemnify the owner is concerned, as per Lata Wadhwa v. State of Bihar¹¹, in the absence of proof of earnings, minimum Rs.3,000/- to be taken into consideration and the accident was on 09.07.2009, after eight years of the expression, the earnings of the deceased can be taken at Rs.3,800/- p.m. As the claimants are four in number, if 1/4th is deducted towards personal expenses of the deceased, it comes to Rs.2,850/- p.m. and Rs.34,200/- p.a. and the same is multiplied with the multiplier '17.5' (applicable from the age of the deceased), it comes to Rs.5,98,500/-. Apart from

¹¹ AIR 2001 (SC) 3218

the same, the claimants are entitled to Rs.50,000/- towards loss of consortium, Rs.10,000/- towards loss of estate, Rs.10,000/- towards care and guidance to the minor child and Rs.25,000/- towards funeral expenses. Thus, the total compensation comes to Rs.6,94,900/-. Out of the same 60% liability of the insurer of Rs.4,16,940/- to indemnify the owner, no way lesser than Rs.2,90,000/- awarded by the tribunal, thereby, there is nothing to interfere with the compensation, but for, to reduce the rate of interest from 9% to 7.5% p.a as per *Rajesh Vs. Ranbir Singh*¹² and *TN Transport Corporation v. Raja Priya*¹³.

9. Accordingly, the appeal is partly allowed, while holding that the deceased was originally unauthorized passenger of the goods vehicle, with no seating capacity much less to travel as loading and unloading coolie under the owner, even to cover any risk under Workmen's Compensation Act, 1923 from Section 147 of the Motor Vehicles Act. However, death was not because of travelling as unauthorized passenger, but after fall there from, subsequent to run over under the wheels of the tractor-trailor, due to the rash and negligent driving of the driver, thereby to that extent 60% liability to indemnify the owner, for nothing shown of even

¹² 2013 ACJ 1403

¹³ (2005) 6 SCC 236

ordering pay and recovery or exoneration as the M.V.I. report and charge sheet clearly show valid driving license particulars, thereby, the 60% liability of the insurer arrived by the tribunal at Rs.2,90,000/- is confirmed. However, by reducing the rate of interest from 9% to 7.5% p.a. In other respects, the award of the tribunal holds good. No order as to costs.

10. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Date: 14.11.2016
pab

Dr. B. SIVA SANKARA RAO, J

