

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.238 of 2010

JUDGMENT:

The 2<sup>nd</sup> respondent-insurer among two respondents including owner of the auto bearing No.AP 21V 4249, maintained the appeal impugning the award of the tribunal dated 06.11.2006 maintained by two claimants, wife and major daughter of the deceased-Boya Bachu Karranna, aged about 50 years as per Ex.A3-Post Mortem Report, out of claim under Section 166 of the Motor Vehicles Act, for a compensation of Rs.3,00,000/- since awarded of Rs.1,09,300/- with interest at 7.5%p.a., with the contentions in the grounds of appeal vis-à-vis oral submissions that the tribunal gravely erred in not considering contribution with triple riding and in fact the accident was the result of rash and negligent driving of the deceased alone for no fault of the auto driver and criminal case also ended in acquittal with clear finding of no negligence of the auto driver, thereby, sought for setting aside the award fixing liability on the insurer and allow the appeal.

2. Whereas, it is the submission of the learned counsel for the respondents/ claimants that the award of the tribunal holds good and for this Court while sitting in appeal there is nothing to interfere but for no cross objections the compensation awarded is utterly low to enhance and hence to dismiss the appeal.

3. Heard and perused the material on record.

4. Even from the acquittal judgment exhibited as Ex.B2, the scope is very limited even under Section 42 of the Indian Evidence Act, at para-7 says a finding from the evidence of PW.6 of the criminal case by name Jayanna of he sustained injury to his right hand and two persons including deceased herein besides another Maheswar Reddy succumbed to the injuries in the accident. PW.1 therein, the informant, in registering Ex.A1-F.I.R. is PW.2 before the tribunal in giving evidence by name M.Suryanarayana Reddy. He deposed that he did not see the driver and the accident occurred while Jayanna and two deceased were proceeding on motor cycle from the auto hit them and both died at the spot. No doubt, the record shows the contribution of the deceased also but once it is depending upon size of the vehicle also besides his triple riding itself there is a contribution to the accident, at best it can be said equal liability and even taken the same, what the tribunal awarded of Rs.1,09,300/- with interest at 7.5% p.a. no way excessive but utterly low but for no cross objections to enhance.

5. With the above observations, the appeal is dismissed. There is no order as to costs.

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

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Dr. B. SIVA SANKARA RAO, J

Date:21.10.2016  
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