

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.2867 of 2012

JUDGMENT:

The 3rd respondent-insurer, among three respondents including owner of the tractor-trailor bearing Nos.AP 02 U 7637 and 7638, impugning the award of the tribunal dated 15.06.2012 in O.P.No.275 of 2009 filed by the four claimants, under Section 166 of the Motor Vehicles Act (for short 'the Act'), for a compensation of Rs.4,00,000/-, for the accidental death of the deceased-Vadde Vallapu Sanjeeva Karna, aged about 30 years, no other than bachelor son of the 1st claimant and the claimants 2 to 4 are no way dependents, being bother and sisters, since awarded Rs.2,20,000/- with interest at 7.5% p.a., fixing liability of pay and recovery, maintained the appeal.

2. The appeal respondents 5 and 6-driver and owner (no other than respondents 1 and 2 of the claim petition remained ex parte before the tribunal) even unserved, from the submission of not necessary parties to the appeal, same is recorded vide M.Chakra Rao vs Yelubandi Babu Rao @ Reddemma¹.

¹ (2001 (1) ALT 495)

3. The main contention of the learned counsel for the appellant-insurer is that the deceased was an unauthorized passenger for no seating capacity to the tractor propelled to the tractor, to travel much less as coolie, for even Act Policy under Section 147 of the Act, no way covers and the tribunal went wrong in fixing liability of pay and recovery saying it tantamounts to violation of permit is unsustainable and pay and recovery liability may be set aside, by exonerating the insurer and placed reliance on Sardari v. Sushik Kumar², New India Assurance Co. Ltd. V. Vedwati³, National Insurance Co. Ltd. V. Prema Devi⁴, M.V.Jayadevappa v. Oriental Fire & Genl.Ins.Co.Ltd.⁵, and Vachala v. V.R.Kumar⁶.

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 but for no cross objections even to grant any higher relief and hence to dismiss the appeal.

5. Heard and perused the material on record.

6. The deceased was travelling in the tractor by sitting beside the driver of the tractor. No doubt, the deceased was an unauthorized passenger at the time of travelling, there

² 2008 ACJ 1307

³ 2007 ACJ 1043

⁴ 2008 ACJ 1149

⁵ 2005 ACJ 1801

⁶ 2006 ACJ 2098

from, more particularly from the expression of Vachala (supra) of this Court. However, the fact remains that the death was not while travelling as unauthorized passenger, but for after fall having run over from, as many as 14 internal injuries including the skull and protousia besides multiple fractures including at skull and right frontal region.

7. Leave it as it is. There are no cross objections in this appeal, much less, any independent appeal either by the owner or claimants. The law is fairly settled more particularly, from the expression of the Apex Court in *Ranjana Prakash V. Divisional Manager*⁷ that in the absence of cross appeal or cross objections, the appellate Court cannot grant higher than what the tribunal already awarded, in saying, there is violation of permit for no seating to travel and the policy covered the risk to order pay and recovery said conclusion supports. From the expression of violation of permit also one of the considerations was within the discretionary power of the tribunal under Section 168 of the Act as per the expression in *B.V.Nagaraju v. Oriental Insurance Company*⁸.

8. Having regard to the above, though it can be said that from the death after fall and the deceased contributed to the

⁷ 2011(8) Scale-240

⁸ 1996 ACJ 1178

accident while travelling as unauthorized passenger, not died as unauthorized passenger but as third party to fix 40% contribution of the deceased and 60% on the insurer to indemnify the owner. For want of cross objections, since already awarded liability of pay and recovery, there is nothing to interfere on the quantum or pay and recovery liability. The pay and recovery directions are as follows:

The insurer shall deposit said amount within one month from the date of receipt of a copy of this order, failing which the claimants can execute and recover. It is made clear from the settled expressions of the Apex Court in *United India Insurance Co. Ltd. V. Lehu*⁹ and *Oriental Insurance Company Limited Vs. Nanjappan & Others*¹⁰ that the insurer is entitled, while depositing the amounts payable, if not deposited or paid any amounts so far to deposit the balance amount to approach the tribunal to direct the RTA concerned not to register any transfer of the crime vehicle and to seek for attachment of the crime vehicle or other property of the insured as an assurance for execution and recovery in the same proceedings or under revenue recovery as per the Motor Vehicles Act, 1988, and also ask the tribunal not to disburse the deposited amount of the respective claimants (but for to

⁹ JT-2003(2) SC 595 = 2003 ACJ 611

¹⁰ (2004) 13 SCC 224=2004-SAR(civil)-290

invest in a bank) till such attachment order is made. However, after the same, the tribunal shall not withhold the amount of the claimants, if there is any necessity to permit for any withdrawals but for to invest the respective balance amounts separately in fixed deposits in a nationalized bank. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

9. Accordingly, appeal is dismissed. No order as to costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Date:14.11.2016
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Dr. B. SIVA SANKARA RAO, J

