HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.1857 of 2011
IN/AND
M.A.C.M.A No.334 of 2016

JUDGMENT:

Heard. The delay of 15 days in filing the appeal is condoned. Registry to number the appeal, if otherwise in order. Appeal is taken up for hearing.

2. Heard learned counsel for the claimants/appellants. O.P.No.37 of 2007 was filed against the driver and the insurer of the Tractor and Trailer bearing Nos.AP-16-AG-6055 and AP-16-AG-6066 for Rs.4,00,000/- originally under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act'). Later as per order, dated 12.01.2010, in I.A.No.22 of 2010 the Section of law was amended to 166 of the Act. The claimants are none other than wife, minor children and parents of the deceased Puli Nageswara Rao, who is the owner of said Tractor and Trailer.

3. The averments in the petition are that the deceased along with the driver-first respondent went to the fields and after completion of puddling of the agricultural land while crossing boundary bund, due to rash and negligent driving of driver of the first respondent, the tractor turned turtle with trailer and the deceased fell down from the tractor and died, whereas the driver jumped from the vehicle. It is stated that the vehicle is insured with the 2nd respondent-insurer and hence, he is liable to pay compensation to the claimants.

4. The first respondent remained *ex parte* before the Tribunal even though impleaded in the appeal, as such, the appeal is dismissed for default, which is no way fatal to maintainability of the appeal.

5. The Tribunal vide award, dated 07.09.2010, dismissed the claim holding that the deceased is not a third party and being owner of the

vehicle he cannot maintain the claim under the Act. For that conclusion, the Tribunal relied upon the expression of the Hon'ble Apex Court in **Dhanraj Vs. New India Assurance Co.Ltd.**[1], where it is held that the insurance policy even covers risks incurred by the insured in respect of death or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. However, it does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle and reiterated by subsequent expression of the Apex Court in **Oriental Insurance Co.Ltd. Vs.Sunitha Rathi and others**[2]**.** Impugning the finding of the Tribunal in exonerating the insurer while dismissing the claim, the present appeal is filed.

6. Undisputedly the deceased was owner of the Tractor and not a third party. If at all there is any personal accident, the claimants have to approach the Consumer Forum or otherwise as held in **Dhajraj's case (supra 1)** but a claim under the M.V. Act as a third party, cannot be maintained.

7. Having regard to the above, there are no merits in the appeal but for to say remedy of the claimants is if at all covered by personal accident claim, approach the Consumer Forum to workout the remedy invoking Section 14 of the Limitation Act for *bona fide* prosecution before the Tribunal and in this appeal.

8. Accordingly, M.A.C.M.A.M.P No.1857 of 2011 is ordered and the appeal is dismissed. No costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

JANUARY 21, 2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date: 21.01.2016

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[1] 2005 ACJ 1 (SC)

[2] 1998 ACJ 121