

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA MP No.3140 OF 2011

IN/AND

MACMA No.1549 OF 2016

JUDGMENT:

_____ The insurer/ 3rd respondent, among the three respondents including the driver and owner of the lorry bearing No.AP-24-U-9505, maintained the appeal with delay condonation of 298 days alleging that due to administrative reasons in processing papers with opinion and getting sanction, release of funds and filing of appeal therefrom with the contentions in the grounds of appeal that the Tribunal erred in awarding compensation in O.P. No.165 of 2008 dated 24.06.2010 maintained under Section 166 of the Motor Vehicles Act, 1988 for Rs.3,50,000/-, of Rs.1,90,000/- with interest at 6% per annum, maintained by the five claimants i.e. wife, two minor children and the parents of the deceased Venkati, aged about 30 years as per Ex.A.2 – Post Mortem Report, in fixing joint liability; the tribunal ought to have considered that the deceased was unauthorized passenger and there is no proof that he was alleged labour for loading and unloading in traveling in the lorry and P.W.2 set the law in motion in saying that the deceased and some others were waiting at Maradam Road along with flowers and vegetables to carry them to Gajapathinagaram and all of them have boarded the lorry along with alleged flowers and vegetables etc., and said lorry dashed against another stationed lorry, and from the FIR itself sufficient to say that the deceased was unauthorized passenger and thereby sought for setting aside the award of the Tribunal by holding that the deceased was unauthorized passenger and exonerate the insurer from liability by allowing the appeal.

_____ Whereas it is the contention of the counsel for the claimants/ respondents 1 to 5 to the appeal, more particularly, from the charge sheet - Ex.A.3 and the evidence of P.W.2 that at the time of accident one Demudu died in the cabin itself, while the said deceased - Venkati

fell down from the lorry, from the dashing of the opposite lorry, after fall he succumbed to injuries and P.W. 2 deposed that he along with others boarded the lorry with luggage not in the cabin and once such is the case, there is nothing for this Court to place simply reliance on Ex.A.1-FIR merely because it is exhibited by claimants when subsequent investigation by police through Ex.A.3 - charge sheet is clear apart from the evidence of P.W.2, and once the material shows that the deceased was succumbed after fall from the lorry though originally unauthorized passenger, at the time of fall not unauthorized passenger, but third party, even to say atleast for 60% liability on the owner and insurer of the lorry and 40% liability on the deceased for boarding the lorry as unauthorized passenger.

Coming to the 60% liability of the insurer is concerned, what the Tribunal awarded Rs.1,90,000/- with interest @ 6% per annum no way excessive, but for no cross objections to enhance.

Accordingly and in the result, while condoning the delay, the appeal is disposed of holding that the deceased also contributed to the accident an unauthorized passenger in boarding the lorry, though as the deceased died as a third party after fall from the lorry accident by involvement of the lorry and for that there is 60% liability on the insurer for remaining 40% is composite negligence of the deceased in boarding as unauthorized passenger, however what the awarded no way requires interference for not excessive.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

04.02.2016

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