

THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.223 OF 2016

JUDGMENT:

In the unnumbered appeal, notice ordered to respondents 1 to 6. For not taking of steps, the unnumbered appeal against the respondents 1, 5 and 6 was dismissed vide order 09.03.2015 and the same was later restored on 05.11.2015 as per order in MACMA MP No.5402 of 2015 and notices were taken. Out of the respondents, first respondent is the injured/ claimant, second respondent is the owner of the vehicle, since died, his legal representatives respondents 3 to 5 were impleaded before the Tribunal as per order in I.A. No.1030 of 2006 dated 30.10.2006 and the notice taken so far as respondent No.5 concerned, returned as left the country and others served. Once there is substantial representation to the estate of the deceased/second respondent by respondents 3 and 4 out of 3 to 5 of which respondent No.5 unserved as left, even taken as unserved there is a sufficient representation for the second respondent/ previous owner and the present owner/ respondent No.6 already impleaded and served, failed to attend. The delay of 94 days already condoned for the reasons assigned of administrative delay in obtaining sanction and permission and processing papers to file the appeal by confirming the same once again. The appeal is taken up for hearing.

02. In the claim petition filed by the injured during his minority later declared as major as per orders in I.A. No.712 of 2009 and 713 of 2009 dated 07.10.2009 against respondents 1 to 6 supra, for the injuries sustained in the motor accident dated 24.01.2006 in the claim for Rs.5,00,000/- under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') with the averments that while the petitioner was going towards his house after completing painting works with his father and others on foot,, at Rayachoti near Mosque the tractor and trailer bearing No.AP 04 T 0420 and 0421 carrying water tanker filling drum coming in opposite direction at the uneven road hit the petitioner, as a result, the big

tire of the tractor run over and the water tanker also fallen on the left thigh and caused crush injury among other injuries and he was treated in Government Hospital, Rayachoti and later at SVRR Hospital, Tirupati, and operated twice by insertion of steel rods and there was ultimately amputation of left leg above knee. From the evidence, the Tribunal awarded compensation Rs.3,16,269/- with interest @ 7.5% per annum in the O.P. No.83 of 2008, renumbered from original O.P. No.325 of 2006, vide award dated 14.10.2010.

03. The contention in the grounds of appeal filed by the insurer/ second respondent is that the compensation awarded is excessive and untenable; the tractor alone is insured and not the trailer and the rate of interest is also excessive and hence to exonerate the insurer.

04. The claimant did not appear, so also the other respondents 3 to 6, of whom respondents 3 to 5 legal representatives of the second respondent as referred supra.

05. No doubt as per the contention of the counsel for the insurer/ appellant, the FIR and charge sheet speak the water tanker with water loaded on the trailer fallen on the left thigh of the injured and the contention is trailer is not insured but for tractor and hence the insurance company there from not be made liable.

06. In fact, the FIR and charge sheet are not be all and end all. What the injured/ claimant categorically stated in support of the plea in the claim petition that the tractor big tyre dashed him, from which he fell down and thereafter the water tanker with water drum also fallen on his left thigh even from that he fell down by involving the tractor, which is undisputedly insured, further aggrieved by fall of the water tanker loaded on the trailer. The trailer is not independent loco motion much less the accident occurred only from the involvement of the trailer as a separate motor vehicle, even within the meaning of the Act. The cloud is cleared by the expression of this Court earlier even it is also for the reason once the trailer is without independent loco motion propelled to the tractor, it is the

tractor that involves even trailer also involved thereby the insurer cannot escape from the liability.

07. Even coming to the quantum of compensation, once there is amputation of the injured/claimant left leg above knee and at the time of accident aged about 55 years besides artificial limb required with left leg disability more than 85%, once the tribunal scanned to the evidence and came to the conclusion, but for the compensation is low if at all the cross objections to enhance, no way excessive. Accordingly, the appeal is liable to be dismissed.

08. In the result, the appeal is dismissed. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

27.01.2016

BV