

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.5557 of 2011 IN/AND

M.A.C.M.A.No.379 of 2016

ORDER:

The 2nd respondent/insurer among two respondents including owner of lorry bearing No.KA 34 D8199 of O.P.No.285 of 2007 on the file of Motor Accidents Claims Tribunal-cum-I Additional District Judge, Kadapa, which was filed by the injured claimant for compensation of Rs.1,00,000/- under Section 166 of the Motor Vehicles Act, maintained the appeal impugning the award of the tribunal dated 06.07.2011 fixing joint liability of Rs.54,000/- with interest at 6% p.a. The tribunal held that the claimant and others were travelling as owners of the goods i.e., fishes to make the insurer liable by belying the evidence of RW.1, employee of the insurer of Ex.B1-policy which is not covered the risk for additional premium any person to travel; the injured so also others were traveling as unauthorized passengers. In filing the appeal, there is delay of 28 days.

2. Though, the 1st respondent/claimant served, he failed to attend in appeal as well as in delay condonation application. The 2nd respondent-owner remained

exparte before the tribunal and even impleaded in the appeal and dismissed for default, no way fatal to the maintainability of the appeal vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**^[1].

2. For the reasons stated in the affidavit filed in support of the petition, the delay of 28 days in filing the appeal is condoned. At request, the appeal is taken up for hearing.

3. Heard the learned counsel for the appellant and taken as heard the learned counsel for the claimant/1st respondent. Perused the material on record.

4. In fact, from the very claim petition averments, even it is not the case of the claimant that she along with others were travelling in the lorry as owners of a common load i.e, fish, to claim one among them as attendant of goods but for saying they were in transit along with their fish as goods by sitting on the load not even in the cabin. It is also the evidence of the claimant, as referred in para-8 of the award, that she was travelling in the lorry bearing No.KA 34D 8199 by loading her fish along with three others from Kadapa to Rajampet and that she was sitting on the load. Thereby, they are nothing but unauthorized passengers and they were taking fish to sell locally and the same is not within the meaning of 'goods' and the tribunal gravely ignored

the same. The evidence of RW.1 suffice to say that the policy is not covered the risk of unauthorized passenger, if at all to fasten the liability on the owner.

5. Accordingly and in the result, the appeal is allowed by exonerating the insurer and by confirming the quantum of compensation against the 1st respondent-owner of the vehicle. There is no order as to costs.

6. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:04-02-2016

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[\[1\]](#) (2001 (1) ALT 495)