

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.328 OF 2016

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JUDGMENT:

Among three respondents in M.V.O.P. No.695 of 2009 viz., driver, owner and insurer of the lorry bearing No.AHB 5421, 3rd respondent—insurer maintained the appeal against the four claimants, no other than wife, two minor children and mother of deceased Raghava Surya Chandra Adinarayana, aged about 35 years as per Ex.A-3—post mortem report, who died in the motor accident dated 23.06.2005 while proceeding towards Hanuman Junction along with road roller bearing No.AP 31Q 9826 in lorry bearing No.AHB 5421 from Tanuku, the vehicle in question was carrying goods, the deceased was working under the employment of Maruthi constructions, Ravulapalem, at the relevant date of accident, the said Maruthi constructions obtained vehicle on hire to transport the road roller bearing No.AP 31 Q 9826 from Tanuku Town limits to Hanuman junction and he was attending as representative of the goods and from which by negating the contention of the insurer owner and driver, remained ex parte before the Tribunal by fixing joint liability, the Tribunal awarded compensation of Rs.5,15,000/- with interest at 7.5% per annum vide award dated 01.06.2011; with the contentions for impugning the award fixing joint liability, that compensation is not entitled by LRs of the deceased to be indemnified by insurer for the deceased being unauthorized passenger of the goods vehicle, apart from the quantum of compensation and rate of interest are excessive and the other contention is even Tribunal passed the order in I.A. No.473 of 2009 dated 11.06.2010 restoring the O.P before the Tribunal dismissed for default on 17.07.2008 for not entitled to interest till 11.06.2010 for 419 days, ignored in considering said order and the other contention is that the insurer deposited 50% of the amount while filing the appeal beyond that it is not otherwise liable

on the compulsion in the E.A No.180 of 2011 paid the entire decree amount and thereby what is the amount deposited pending appeal of 50% is entitled to be withdrawn to order for refund to insurer.

2) The driver and owner since remained ex parte before the Tribunal, taken as heard and heard the learned counsel for the respondents/ claimants, who contended that the award of the Tribunal holds good, for this Court while sitting in appeal there is nothing to interfere but for no cross objections to enhance the compensation and hence to dismiss. Perused the material on record.

3) So far as the contention that the deceased was unauthorized passenger of the goods lorry concerned, apart from the fact that there is no role against from the insurer, even the evidence on record of the claimants particularly among PWs.1 to 3, 1st claimant and employer of the deceased—PW.2 in deposing that deceased was travelling, as representative of the goods with the road roller in the crime lorry and there can be nothing to disprove by even said evidence which is suffice to say the claimants can prove that factum also by corroborating from Ex.A6—driving licence of deceased. Thus, the Tribunal is right and the contention raised in the appeal that the deceased was not travelling as representative of the goods and the road roller is not goods is untenable and negated.

4) Coming to the period between dismissal and restoration of O.P. i.e., 07.07.2008 and 11.06.2010 respectively, the claimants are not entitled to interest, that is the order of the Tribunal in I.A. No.4735 of 2009 undisputedly which is binding and inadvertently once the Tribunal ignored the same and the same is brought to the notice of this Court, this Court is bound to consider the same and thereby for the said period, the appellant—insurer is not liable to pay interest equally, the driver and owner, whatever the interest portion if at all paid to the

claimants, the insurer is entitled to claim back from the claimants by filing execution petition or restitution application as the case may be before the Tribunal by virtue of this order.

5) Accordingly and in the result the appeal is allowed in part by reducing the liability of interest during the period from 07.07.2008 to 11.06.2010 which is entitled to refund to the insurer since paid to the claimants by filing execution petition or restitution application as the case may be by virtue of this Order and so far as the excess amount deposited by the insurer and lying in Court deposit concerned, since the insurer is entitled by virtue of this order, the Tribunal shall permit on check petition filed to refund only if it is excess to what is payable. There is no order as to costs.

6) Consequently, miscellaneous petitions, pending if any in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

05.01.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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