HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.659 OF 2010

JUDGMENT:

The appellant, no other than 2nd respondent—insurer out of two respondents including owner of Tata Sumo bearing No.AP 36/V 1456 of the claim petition O.P. No.1123 of 2006 on the file of learned Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad (for short 'the Tribunal') filed for a compensation of Rs.10,00,000/- under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') by the claimants no other than parents, wife, one major son and minor son of the deceased by name Mudam Narsimulu, aged about 40 years as per Ex.A2—post mortem report, MPTC member and working as sub-contractor and earning therefrom of Rs.15,000/- per month for his death in the motor accident dated 13.01.2005 alleged as caused by the Tata Sumo supra and from contest since the Tribunal awarded Rs.4,04,000/- with interest at 9% per annum on 17.03.2009, impugning the same maintained the present appeal.

2) The contentions in the grounds of appeal vis-à-vis oral submissions in the course of hearing are that the findings of the Tribunal are unsustainable and contrary to evidence on record, the Tribunal failed to see that the crime is registered against unknown vehicle under Section 304-A IPC and the Tata Sumo supra was falsely implicated, that the Tribunal failed to see that the Superintendent of Police, Nizamabad issued a letter to the appellant—insurer vide letter No.40/Addl/SP/Camp/05, dated

30.04.2005 stating that on 13.01.2005 (date of accident) the deceased hit a tree near Reliance Petrol Bunk on NH7 in the outskirts of Anthampally Village with his Bajaj Kawasaki motor cycle and died, that the Tribunal failed to see that the Superintendent of Police, Nizamabad initiated disciplinary action against the Investigating Officer for filing chargesheet by implicating the Tata Sumo supra for illegal gains through not involved, that the Tribunal erred in taking high income without proof and applied multiplier '16' so also the rate of interest, that the appellant—insurer filed a petition u/s 170 of the Act and the same is allowed, hence to set-aside the award by exonerating the Insurer.

3) It is the submission of the learned counsel for the respondents 1 to 5 (claimants) that there is nothing to interfere with the findings of the Tribunal for this Court while sitting in appeal but for no cross objections to grant compensation as prayed for by dismissing the appeal.

4) The appeal 6th respondent-owner who remained *ex parte* before the Tribunal though served notice not turned up is taken as heard.

5) Heard both sides and perused the material on record.

6) On perusal of the award, it shows that the Tribunal from the contest by the appellant—Insurer, from the claim petition 1st respondent—owner remained *ex parte*, from the evidence of PW.2 stated as eye witness and PW.3—Investigating Officer and

the contents of Ex.A1—charge sheet, Ex.A2—post mortem report, Ex.A3—MVI report, Ex.A4—Form 54 and Ex.B1—policy which show said vehicle belongs to the respondent No.1 insured with the appellant—insurer and was in force as on the date of accident and also relying on the principles enunciated by the High Court of Uttaranchal at Nainital in ***Sudesh Kumar Kapur vs Anil Anand***[1] the facts of which case are stated similar, held that the accident was caused due to rash and negligent driving of driver of the Tata Sumo supra and also believed the version of Investigating Officer in Ex.A2—charge sheet that though initially he registered Ex.A1—FIR against unknown vehicle, but later in his investigation he detected the driver of the vehicle and involvement of the Tata Sumo supra.

7) The claim petition averments show that while the deceased was proceeding on his Bajaj Kawasaki motor cycle bearing No.AP 25/C 8794 from Bhiknoor towards Kamareddy and when he reached near Petrol Bunk at the outskirts of Anthampally Village, dashed by the Tata sumo supra coming in opposite direction being driven by its driver in rash and negligent manner at high speed causing multiple injuries and later succumbed to injuries while undergoing treatment at Government Hospital, Kamareddy.

8) The very accident and the manner claimed supra in the petition of alleged involvement of the vehicle of Tata Sumo of 1st respondent insured with 2nd respondent is in serious dispute from the contention of the 2nd respondent—insurer that the

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1st respondent—owner of the vehicle did not chose to appear and contest. The insurer contest, as referred supra, is that the said vehicle is falsely implicated and there is collusion between owner of the vehicle and the claimants and it is managed to get the charge sheet filed by coloured investigation with distorted facts beyond truth and the deceased died of his own negligence in driving the vehicle having hit the road side tree on the NH.5 and there is no involvement of the vehicle of 1st respondent.

9) In this regard PWs.1 to 3 were examined on behalf of claimants and marked Exs.A1 to A-7. On behalf of respondents, RW.1 employee of insurer was examined and Exs.B1 to B7 were marked. The claimants failed to file Ex.B6—FIR.

10) A perusal of Ex.B6—FIR dated 13.01.20015 registered at 11.30 pm based on the report of Smt.Vajravva, wife of deceased Narsimulu to Bhiknoor Police, clearly shows that there is no involvement of the vehicle of 1st respondent—tata sumo. From the contents of the report, at about 10.30 pm she received a phone call that her husband Narsimulu while proceeding from Bhiknoor to Kamareddy on his Bajaj Kawasaki motor cycle bearing No.AP 25/C 8794 in the outskirts of Anthampally Village near Reliance Petrol Bunk at about 9.45 pm some unknown vehicle dashed and he fell down and was shifted to Kamareddy hospital and in the transit, he breathed the last at 10.20 pm and hence reporting.

11) Ex.B7—Inquest report, dated 14.01.2005, shows that it was conducted between 8.00 am and 10.00 am on the body of the

deceased at the Government Hospital, Martuary room, Kamareddy. It also shows the deceased sustained injuries to the right parital of the head with blood clots, bleeding injury to nose and mouth, found grappling showing dragged on the right side of right hand and also injuries between little finger and ring finger of left hand.

12) From the FIR and inquest report covered by Exs.B6 & B7 respectively, it is a case of hit and run but not self negligence and fall from the bike and even the bike was not subjected to examination by Motor Vehicle Inspector. Further, from the evidence of RW.1 coupled with Exs.B6 and B7 supra and Ex.B2—letter issued by Superintendent of Police, Nizamabad to the Manager, New India Assurance Company Limited, it shows that the Tata Sumo bearing No.AP 36 V 1456 is falsely implicated in the crime for the alleged cause of death of Narsimulu on 13.01.2005 at about 9.45 pm while he was proceeding on the bike hit a tree near Reliance Petrol Bunk and died while shifting to Hospital and the false implication initially as if an unknown vehicle and later as if the Tata Sumo, which is only to claim insurance if possible and said case was reviewed and re-investigated, thereby not to entertain any claim in relation to it against the Tata Sumo insurance. Ex.B3—copy of memo filed by SDOP, Kamareddy, shows there is a false implication of the Tata Sumo and its driver. Exs.B4 is the Copy of proceedings of Deputy Inspector General of Police, Nizamabad Range, Nizamabad, suspending Sri Mallikarjun—Sub Inspector of Police, P.S.Bhiknoor

for false implication of Tata Sumo. Ex.B5 is the copy of order of Superintendent of Police, Nizamabad communicating the suspension order of Sub-Inspector of Police, Bhiknoor. The owner of Tata Sumo for reasons better known did not come to witness box and the driver of Tata sumo is not examined, much less as a Court witness by the claimants, if at all, to say any involvement, which also shows the collusion and false implication. The Ex.A1—charge sheet since re-opened for reinvestigation covered by the proceedings particularly Ex.B3; thus cannot be given credence and even from Ex.A3—MVI report of Tata Sumo, there is nothing to show any damage to the Tata Sumo but for noting the left side bumper corner slightly damaged and it is not even in the final report covered by Ex.A1 of the vehicle came in a wrong side and dashed the deceased. It is not even the evidence of PWs.2 and 3 in this regard substantially to give any credence to their evidence.

13) The Tribunal thus gravely erred in finding that the vehicle is as if not involved. It is at best a case of hit and run and if not at best to make a claim for the motor cycle while in use the accident occurred against the insurer, if at all covered by personal accident claim coverage. Thereby what the Tribunal awarded of Rs.4,04,000/- is totally unsustainable. The conclusions arrived by the Tribunal ignoring all these material aspects and in simply relying upon Ex.A1—charge sheet and evidence of PW.2 is perverse and *per se* unsustainable that too, when the claim made under Section 166 of M.V Act, and for in the facts supra, there is

no need even to treat under Section 163-A of M.V Act much less with such conversion of Section of law of the claim against the Tata Sumo owner and Insurer for the vehicle not at all involved.

14) Accordingly and in the result, the appeal is allowed setting aside the award passed by the Tribunal whatever the amount paid to the claimants from that deposited by the Insurer pending appeal, the insurer is at liberty to recover. No order as to costs,

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

Dr. B. SIVA SANKARA RAO, J

Dt.06.04.2017
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.659 OF 2010

Date: .03.2017

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