HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.293 of 2010

JUDGMENT:

The claimants 5 in number no other than wife, married daughter, major son and two grandsons of deceased by name Venkateshwara Rao, maintained the claim under Section 163-A of the Motor Vehicle Act, 1988 (for short 'M.V. Act') on the file of Motor Vehicles Accidents Claims Tribunal-cum-IV Addl. District Judge (for short 'the Tribunal') for compensation of Rs.2,50,000/- against the driver, owner and Insurer of the auto truck bearing No.AP 37 X 3912, for the accidental death of Venkateshwara Rao supra aged about 60 years. Since the tribunal, on contest and from the evidence on record, by award dated 20.04.2009 granted compensation of Rs.1,37,000/- with interest at 7.5%p.a. by fixing liability against the driver and owner (1st and 2nd respondents) but exonerating the 3rd respondent-Insurer, the claimants maintained the appeal, with the contentions in the grounds of appeal that the tribunal gravely erred in exonerating the Insurer by ill-appreciation of the facts and law instead of fixing joint liability from the policy is a package policy and also without proper appreciation of evidence of R.W.3 and without considering the factum of in a goods vehicle seating is not criteria, erroneously concluded that one is permitted in auto but the same is only meant for driver in the body of the auto and not for other purpose, that the tribunal failed to see the deceased as a owner of goods as carrying vegetables can travel and the driver also got valid driving license and at best should have directed for pay and recovery rather than exoneration of the Insurer hence to allow the appeal. In the course of hearing, the appellants also submitted the quantum to be enhanced. The learned counsel for the appellant claimants reiterated the same.

2. Whereas, it is the submission of the learned counsel for the Insurer that the award of the tribunal holds good and there is nothing to interfere.

3. Heard and perused the material on record.

4. The factual matrix of the case on record shows the deceased who was doing vegetable business, on the fateful day on 30.05.2007 went to G.Vemavaram village, with the truck auto supra of 2nd respondent driven by the 1st respondent to purchase vegetables and having purchased the vegetables and loaded the same while returning in the early hours of 31.05.2007 and when reached near Siddaram old bridge with the loaded vegetables and unloading coolies, due to rash and negligent driving of the driver of the auto, the same dashed the lorry in front of it and the lorry ran over without stopping and the deceased sustained multiple injuries and succumbed and two others by names Sripadam Nukaraju and Kasireddi Ganesh sustained injuries and they were shifted to Government hospital, Tanuku. The deceased traveled in the auto as owner of goods and it is on the statement of Kesireddi Ganesh, a case in Cr.No.76 of 2007 is registered. The police after investigation filed chargesheet against the truck driver. The driver and owner of the truck remained exparte. The Insurer contested by disputing the manner of the accident and involvement of the truck of 2nd respondent due to rash and negligent driving of the driver of the 1st respondent by further saying the deceased was unauthorized passenger of the truck without seating capacity but for driver and the policy no way covers the risk and besides the deceased there are two more persons traveling in the truck by sitting either side of driver and one Ganesh and the three persons were unauthorized passengers, the driver has no valid driving license to drive the truck proceeding in

contravention of policy and permit, the Insurer cannot be made liable and the claim if any is against the unknown lorry for otherwise no fault of the truck driver and sought for dismissal also by saying the driver got only learners license and not authorized to drive LMV goods vehicle that also exonerates the Insurer from any liability. It is from the pleadings and from the evidence of P.Ws. 1 and 2 and Exs.A.1 to A.8 including driving license of R.1, C-book and Insurance policy, FIR, Post mortem report, MVI and chargesheet and for R.3-Insurer, R.Ws. 1 to 3 and Ex.B.1 policy, X.2-B Register Extract, X.4 LLR of the driver-R.1. From the evidence, the tribunal held that the deceased was unauthorized passenger and there is no valid driving license to driver-R.1 and Insurer cannot be made liable.

5. Now coming to exoneration of the Insurer sustainable or not concerned, mainly with reference to Ex.B.1 policy whether covers risk or not to see. The policy shows the vehicle owned by R.2 K.Annapurna of Siddantham and there is coverage of basic premium + PA for owner and driver, LL to two employees' Rs.25/- is collected. The facts are not that the deceased was employee of the insured-owner of the vehicle to cover LL to employees' risk but for which Rs.25/- premium paid. The B Register of motor cycle including from the evidence of R.W.1 shows the seating capacity of truck is one and it is a three wheeler goods vehicle LMV with no seating capacity for anybody to sit other than driver. Ex.X.4 is the learners license of the driver-R.1 from 08.03.2007 to 07.09.2007. The accident was dated 30.05.2007 and with the learners license, only eligible to drive LMV non-transport or two wheeler with or without gear. Here, there is a LMV transport goods carriage therefrom the driver has no valid driving license to drive from the learners license and the same is not a ground for exoneration, however in the goods

vehicle the deceased was unauthorized passenger for no coverage of risk of owner of goods. It is thereby the tribunal rightly exonerated the Insurer and for this Court while sitting in appeal, there is nothing to interfere.

6) Accordingly and in the result the appeal is dismissed. No order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.19.01.2017

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