

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CMA No.2395 of 2003

Date: 31-08-2017

Between:

The New India Assurance Company Ltd.,
Bombay Branch,
Bombay.

... Petitioner.

And

Namburi Anusha and others.

... Respondents.



THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CMA No.2395 of 2003

JUDGMENT:

The present appeal preferred by the third respondent-New India Assurance Company Limited in O.P.No.414 of 1994, dated 27-09-1999, questions the liability fixed at 70% to indemnify the owner on the ground that there has been head on collision even as per the observation made by the learned Chairman, Motor Accidents Claims Tribunal-cum-District Judge at Khammam.

2. Heard the learned Standing Counsel Smt. I Maamu Vani for the appellant.

3. She has drawn the attention to the observation made in Paragraph No.8 of the order, wherein the Tribunal has discussed the evidence of P.W.2 and of course, arrived at that there was head on collision, but, however, keeping in view that the crime was registered against the driver of the lorry insured with the appellant and also examining scene of offence of Panchanama and damage to the front portion of the other lorry bearing No.ABK 5439 arrived at the finding that 70% liability can be fixed on the driver of the lorry insured with the appellant and accordingly did so.

4. As could be seen from the finding recorded by the Tribunal, there was another claim petition in OP.No.755/1996 and the very same Court has fixed the liability to the extent of 70% and 30% between the drivers of respondents 1 & 4 in the O.P. When such a finding is recorded based on appreciation of evidence and more particularly, in alike situation, the Tribunal has taken such a view in

an identical claim petition arising out of the same accident, certainly it is difficult to overcome the same and reduce the liability to the extent of 50%. Therefore, there is no merit in the present appeal and accordingly the appeal is dismissed. No costs.

5. It is made clear that even the claimants are entitled to recover only 70% compensation amount awarded by the Tribunal from the respondents 1 to 3 in the O.P and cannot insist for payment of any amount exceeding 70% by the respondents 1 to 3 in the OP and the rest of the 30%, the petitioners are at liberty to recover the same from the other set of respondents. To that extent, the present order and decree is modified as the liability is apportioned in clear terms by the Tribunal.

6. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.



JUSTICE A. SHANKAR NARAYANA

Date: 31-08-2017.

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