

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.391 OF 2007

JUDGMENT:

The Petitioner-injured is the appellant having been aggrieved by the award of the Tribunal dated 28.09.2006 in O.P. No.2747 of 2004 on the file of X Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad awarding compensation of Rs.33,683/- with interest at 7.5% p.a. that too against owner of the vehicle-1st respondent of the lorry bearing No.TN 23 H 2333 insured with 2nd respondent, preferred the appeal with contentions in the grounds of appeal the award of the Tribunal is contrary to law, weight of evidence, probabilities of the case, tribunal gravely erred in exonerating the insured and also failed to consider the disability considered by the Doctor-P.W-2 and the compensation awarded is utterly low and to enhance the compensation and to fix the joint liability against both the respondents.

2) Whereas it is the contention of the 2nd respondent insurer that the award of the Tribunal holds good and the injured is unauthorized passenger and for this Court while sitting in appeal, there is nothing to interfere, hence to dismiss the appeal.

3) Now the points that arise for consideration in the appeal are:

1. *Whether the award of the Tribunal exonerating the insurer from liability is unsustainable and requires interference by this Court while sitting in appeal and if so with what observations?*
2. *To what result?*

POINT-1:

4) The manner of accident as stated is that while the petitioner along with two persons boarded into the lorry and while he was tried to getting into the lorry, the lorry driver suddenly moved in a rash and negligent manner due to which he fell down and the lorry run over his left foot from which he sustained injury. The injuries sustained is described as grievous a digloving and evulsion of sole as per Ex.X-1 and X-2 with reference to the evidence of P.W-2. There is nothing to show that the injured sustained fracture even from the said evidence of doctor. The Tribunal held that boarding of the goods lorry and sustaining of injury, tantamounts to unauthorized passenger of goods vehicle and the insured is not liable and for the injuries sustained from the evidence on record arrived the said amount of Rs.33,683/- as just compensation. So far as the quantum of compensation concerned as referred supra though it is deposed by P.W-2 doctor that there is a permanent partial disability of 20% above, there is no basis for no even any fracture muchless mal-union from the injury to the avulsion of sole, digloving even taken as

grievous.

5) Coming to the insurer liability concerned, boarding a lorry, traveling in the lorry is prohibited and there is no coverage of risk in the policy to make the insurer liable. However, the fact remains herein that it is not while boarding the lorry sustained the injury muchless while traveling in the lorry but though in the attempt to board the lorry as unauthorized passenger, it is while moving, he fell down and the injury sustained not from the fall even to say till fall, he is unauthorized passenger but after fall and the left foot of the injured was run over by the back wheel tire of the lorry, to say the moment his sustained injury from the back wheel of the lorry ran over the left foot, he is a third party is also held by this Court in ***United India Insurance Company Limited V. Kurva Yeju Mallamma***. As such, the award of the Tribunal exonerating the insurer is unsustainable though the quantum arrived is just. Accordingly, point No.1 is answered.

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POINT-2:

6) In the result, the appeal is partly allowed by confirming the quantum, however, by fixing joint liability against the insurer also. The rest of the terms of award holds good. There is no order as to costs in the appeal.

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

Dr. B. SIVA SANKARA RAO, J

Date: 31-10-2014

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