THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.M.A.No.1547 of 2004

JUDGMENT:

The sole claimant, who maintained the claim for the death of his wife, by name Mutharayapalli Kamarun Bee, in the accident that occurred on 4.7.1996, under Section 166 of Motor Vehicles Act, 1988 for Rs.1,50,000/- against the owner and insurer of the Tractor and Trailor bearing Nos.AP 04U 682 and AP 04U 683 before the Motor Accident Claims Tribunal-cum-II Additional District Judge, Proddatur, Kadapa District (for brevity "the Tribunal"), aggrieved by the judgment and decree dated 9.1.2004 in O.P.No.409 of 1999 in awarding Rs.1,34,000/- with interest at 9% per annum, that too only against the owner of the Tractor and Trailor, exonerating the insurer, not only impugning the quantum of compensation, but also in exonerating the insurer, with a request to fix joint liability and to allow the compensation, as prayed for, maintained the appeal with the self-same contentions in the grounds of appeal and the learned counsel for appellant reiterated the same in the course of hearing.

2. Whereas, it is the contention of Sri V. Srinivasa Rao, learned Standing Counsel for the contesting 2nd respondent-Insurer i.e., United India Insurance Company Limited, that the award of the Tribunal holds good and, for this Court, while sitting in appeal, there is nothing to enhance, but for to reduce the rate of interest. It is also contended that there is also nothing to sit in appeal to fix joint liability of the insurer from what the Tribunal has already exonerated. Thereby it is sought for dismissal of the appeal.

3. Perused the material on record. The parties are being referred to as they are arrayed before the Tribunal.

4. Now the points that arise for consideration are:--

(i) Whether the compensation awarded by the Tribunal is utterly low to enhance and if so, the rate of interest is excessive to reduce?

(ii) Whether exoneration of the insurer by the Tribunal is not correct and to fix joint liability or otherwise and, if so, with what observations?

(ii) To what result?

In re. Point Nos.1 and 2 :

5. The fact that the deceased was travelling in the Tractor and Trailor bearing Nos.AP 04U 682 and AP 04U 683 of the 1st respondent-owner as a cooli under him as categorically pleaded and deposed, including in the evidence of P.W.2 eye witness and Ex.A.1, certified copy of F.I.R. speaks the same, if not also Ex.A.4 certified copy of charge sheet, the deceased, by name Mutharayapalli Kamarun Bee, aged about 48 years as on the date of accident, as per Ex.A.3 Postmortem Certificate, is none other than wife of the sole claimant, is not in dispute. It is also not in dispute that Ex.B.1 Policy of Tractor and Trailor is a comprehensive policy and condition IMP-17 covers the risk for 5 coolies, besides driver, by collecting an additional premium of Rs.75/- + Rs.50/-, to say the deceased was working under 1st respondent-owner of the vehicle and it is for the 2nd respondent-insurer to indemnify, since the risk is covered by Ex.B.1 policy, and the Tribunal erred in not noticing the same, while exonerating the insurer instead of fixing joint liability.

6. Coming to the quantum of compensation, as per the very claim petition averments, the deceased was engaged as a cooli on Rs.60/- per day. No doubt, there is no evidence regarding her earnings. The accident was dated 4.7.1996, the Tribunal therefrom taken income of the deceased at Rs.15,000/- per annum. Even from Rs.60/- per day, taken at Rs.1,500/- per month on an average for 25-26 working days in a month, from the claimant's own say and as the claimant is the only person dependant on the deceased, if half is deducted towards personal expenses, following the observations in paras-29 to 32 of the Apex Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION, it comes to Rs.750/- per month x 12 months x multiplier '13', as the deceased was aged about 48 years, then it comes to Rs.1,17,000/- + towards loss of consortium, the claimant is entitled to Rs.1,00,000/- + funeral expenses at Rs.25,000/- + Loss of Estate Rs.10,000/-, as per the latest expression of the Apex Court in RAJESH v. RAJBIR SINGH, that comes to Rs.2,52,000/-, which is rounded of to Rs.2,50,000/-, is the just compensation to which the claimant is entitled to. Though the claim is for Rs.1,50,000/-, to award Rs.2,50,000/- by

enhancing from Rs.1,34,000/-, however, by reducing the rate of interest from 9% per annum to 7.5% per annum from the date of the claim petition till realization, as per the decision in the case of RAJESH (supra).

7. Accordingly, point Nos.1 and 2 for consideration are answered.

In re. Point No.3 :

8. Accordingly and in the result, the appeal is allowed by fixing joint liability on the insurer to indemnify the insured and also enhancing the compensation from Rs.1,34,000/- to Rs.2,50,000/-, however, by reducing rate of interest from 9% to 7.5% per annum from date of claim petition on Rs.1,34,000/- till realization and from this date on enhanced compensation of Rs.1,16,000/- till realization; subject to payment of deficit Court fee under Rule 475 of A.P. Motor Vehicle Rules before the Tribunal within one month from the date of this order on Rs.1,00,000/- (above claim of Rs.1,50,000/-). Without payment of the deficit Court fee, the claimant is not entitled to execute the Award for the enhanced compensation supra. There is no order as to costs.

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

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Dr. JUSTICE B. SIVA SANKARA RAO

29.04.2015.

Msr

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