HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.2914 OF 2015

JUDGMENT:

The claimants no other than the parents, brother and sister of deceased girl aged about 16 years as per Ex.A.5 Post mortem report, maintained under Section 166 of the Motor Vehicle Act,1988 *(for short, 'the Act')*, for the claim of Rs.5,00,000/-(Five lakhs rupees only) against the driver- cum-owner and Insurer of the tractor bearing No.AP20 E 8744 and trailer bearing No.AP23 E 9067 in O.P.No.434 of 2010 on the file of the Chairman, Motor Accidents Claims Tribunal –cum-Principal District Judge, Medak at Sangareddy(for short, 'the Tribunal') and the tribunal after contest by the Insurer, owner remained exaprte, by its award dated 06.03.2012 from the evidence of P.W.1, P.W.2 and R.W.1 with reference to Exs.A.1 to A.6 and Exs.B.1 to B.5 documents, granted compensation of Rs.1,88,000/- with interest at 8% p.a. by fixing liability only against the owern-1st respondent by exonerating the Insurer holding that there is no policy covering the risk for the deceased, as stated traveling as cooli in the trailer and it is also observed that the tractor insured for the agricultural purpose and cannot be used for carrying goods, even to say any load and to travel after unloading not even as permitted by law.

2.It is impugning the same, the unnumbered appeal is filed along with a petition vide MACMAMP No.7357 of 2012 to condone the delay of 141 days in preferring the above appeal stating that due to financial constrains, they could not be able to prefer in time. In view of said submission, the petition is allowed by condoning the delay and the registry is directed to number the unnumbered appeal if it is otherwise in order and the appeal is taken up for hearing.

3.The contentions in the grounds of appeal are that the Court below erred in not believing the evidence of P.W.2 eye witness who clearly stated that the deceased was an agricultural labourer and on the date of accident she was returning in tractor after unloading bricks in the agricultural lands and Ex.B.5 policy shows was in force as on the date of accident and covers risk of agricultural labourers and erroneously held that the deceased was travelling in the trailer as an unauthorized person, that that the tribunal should have considered that the parents and minor sister and brother of deceased are dependents on her by the date of her death, that the tribunal failed to note that the Apex Court in case of risk of third parties in case of any violation of policy conditions, the Insurance Company should pay first and recover from the owner, hence to make the Insurer also liable along with owner and grant compensation as prayed for.

4. Heard the learned counsel for the appellants and 1st respondent-owner of the crime vehicle who remained exparte before the tribunal, even in the appeal impleaded as 1st respondent, dismissed for default vide Court order dated 26.03.2015 no way fatal to the maintainability of appeal as per the expression of in **M.Chakra Rao v. Y.Baburao,** taken as heard also heard the 2nd respondent-Insurance company and perused the material on record.

5. The policy filed shows the total premium paid of Rs.1500/- besides service tax and out of Rs.1500/-, Rs.1350/- is the basic liability besides 100 P.A. but owner, driver Rs.25/- each for paid driver IMT 40 cleaner/conductor IMT39. Thus even therefrom for the claim as cooli not even for unloading with any load but for after unloading to return no other than the unauthorized passenger apart from the policy not covered the risk for not cooli to travel on own showing as rightly contended by the learned counsel for the 2nd respondent/Insurer. Having regard to the above there is nothing to interfere with the finding of the tribunal exonerating the Insurer from liability once policy not covers the risk to indeminify.

6. The learned counsel for the claimants/appellants also places reliance on 2008(2) TAC 582 UIC Vs. Koduri Bhagya, Kadapa, contending that at the time of accident the injured covered by the policy though the trailer not insured but once trailer propelled to the tractor for not a separate motor vehicle, risk can be covered. Here, it is not even the fact as there is no risk coverage from the policy and unless the policy covers the risk, the question of liability of the Insurer to fasten liability does not arise as held in **Sanjeev Kumar Samrat Vs. National Insurance Company**.

7. Coming to the quantum of compensation fixed by the tribunal is concerned, the deceased aged about 16 years unmarried and the dependency is from the age of the parents shown 45 and 40 years and the multiplier for the persons between 41 to 45 applicable is 14 even as per **Sarla Verma v. Delhi Transport Corporation** and as per **Latha Wadhwa vs. State of Bihar** even there is no proof of income and earnings, it can be reasonably estimated at Rs.3,000/- p.m. for any non-earning member and even for housewife as domestic contribution, even minimum Rs.3,000/-

is taken in the present case, undisputedly, the deceased claimed as traveling as cooli, if half is deducted towards personal expenses, it is Rs.1500/-p.m. x 12 x 14= Rs.2,52,000/- besides Rs.25,000/- towards funeral expenses and Rs.10,000/- loss of estate in total Rs.2,87,000/- is the just compensation to which the claimants are entitled, by enhancing from Rs.1,88,000/- awarded by the tribunal by reducing the interest from 8% p.a. to 7.5% p.a. as per **Rajesh v. Rajbir Singh.**

8. In the result, the appeal is partly allowed by enhancing the compensation from Rs.1,88,000/- to Rs.2,87,000/- by reducing the interest from 8% p.a. to 7.5% p.a. from the date of petition till realization but the appellants/claimants are not entitled to interest on the enhanced compensation. The award of the tribunal in other respects holds good. On deposit or execution and recovery by the 1st respondent-Owner, the claimants are permitted to withdraw the same. There is no order as to costs in the appeal. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 14.12.2015

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