

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. M.P. No.6063 of 2012

IN/AND

M.A.C.M.A. No.2787 OF 2015

JUDGMENT:

The appellants, who are claimants filed this appeal having been aggrieved by the Order/Award of the Principal District Judge, R.R District, at L.B Nagar, Hyderabad, (*for short, 'Tribunal'*) in O.P.No.55 of 2008 dated 09.03.2011 against owner of the lorry and its insurer and also subsequent owner of lorry as respondents Nos.1 to 3. The claim is filed under Section 166 of M.V Act for Rs.5,00,000/- for the death of deceased by name Chat Singh Adhikari in a road accident, for which the Tribunal awarded compensation of Rs.4,00,000/-(Rupees Four lakhs only) with interest at 7.5% per annum only against respondent No.3 exonerating the insurer. It is mainly on the ground that the driver is not having valid driving licence of Heavy Motor Vehicle but having driving licence of Light Motor Vehicle (non-transport) covered by RW.1, Ex.B3—Driving licence, apart from Ex.A3—MVI report and Ex.A4—charge sheet particulars.

2) As the MACMA M.P. No.6063 of 2012, to condone the delay of 53 days in filing the appeal, is allowed, the appeal at request taken up for hearing.

3) Heard and perused the record. The contentions in the grounds of appeal impugning the said award are that, the Tribunal ought to have fixed the joint liability of owner and insurer, the amount arrived at Rs.4 lakhs is also unsustainable and it requires enhancement to Rs.5 lakhs and since the policy was in force by the date of accident, the Insurance Company cannot be absolved totally from liability even from imperfect licence. Whereas it is the contention of the learned standing counsel for insurer that as per Ex.B3—driving licence extract, the driver was authorised to drive light motor vehicle of transport and he was not authorized to drive heavy motor vehicle and

at the relevant point of time, when the driver of the vehicle was possessing licence to drive only light motor vehicle, whereas the vehicle involved in the accident is a heavy goods transport motor vehicle, there is nothing to interfere and prayed to dismiss the appeal also with reference to the other submission contention on the quantum of compensation as just and no way requires enhancement.

4) So far as the liability of the insurer is concerned, the policy covered the risk is not in dispute. There is only a dispute regarding the imperfect driving licence. The law is fairly settled by the Apex Court from the expressions in ***National Insurance Company Limited vs Swaran Singh***^[1], ***S.Iyyappan vs United India Insurance Company Limited***^[2] and ***Kanwar Shamsher Singh vs Satbir Singh***^[3] that once the policy covered the risk and even the driver got imperfect or no valid driving licence, the insurer is liable to pay and then recover from the owner.

5) Coming to the quantum of compensation, the age of the deceased was shown as 41 years, the Tribunal therefrom rightly taken the multiplier '14' for the age group of 41 to 45 as the claim is under Section 166 M.V.Act.

6) Coming to the avocation of the deceased, the claimants claimed that the deceased used to earn Rs.10,000/- by doing business in Kirana General Store in Saibaba Nagar, therefrom the Tribunal taken the income of the deceased at Rs.3,000/- per month. Even as per the Apex Court's expression in ***Latha Wadhwa vs State of Bihar***^[4] in the absence of proof of earnings, the minimum to be taken is at Rs.3,000/- per month. The accident was occurred on 31.12.2007 nearly 7 years after the said expression and even taken Rs.3,600/- per month; out of the three claimants, 1st claimant is wife of the deceased, claimant Nos.2 & 3 are major and minor sons of deceased, even major son is not a dependant, 1/3rd to be deducted towards personal

expenses from the monthly income of the deceased and then it comes to Rs.2,400/- per month. The loss of dependency therefrom comes to Rs.4,13,200/- (Rs.2,400/- X 12 X 14). Apart from that, the claimants to be awarded Rs.1,00,000/- towards loss of consortium to 1st claimant, Rs.25,000/- towards funeral expenses of deceased and Rs.10,000/- towards loss of estate as per the Apex court's expression in **Rajesh vs Rajbir Singh**^[5]. Even taken from a subsequent expression of Apex Court showing Rs.5,000/- only awarded as loss of consortium, the claimants are entitled to Rs.5,00,000/- as claimed which is no way excessive but for just to award.

7) Accordingly, the appeal is allowed by enhancing the compensation from Rs.4,00,000/- to Rs.5,00,000/- along with interest on Rs.4,00,000/- from the date of petition, whereas on the enhanced amount of Rs.1,00,000/- the rate of interest at 7.5% per annum shall be calculated only from today till the date of realization, further by modifying the award of the Tribunal by setting aside the finding of the Tribunal in exonerating the insurer from liability to the extent in directing the respondent No.2 is liable to pay and then recover from the respondent No.1—vehicle owner. The respondents shall deposit said amount within one month, failing which the claimant can execute and recover. It is made clear that the insurer is entitled, while depositing the amount payable, if not deposited or paid any amount so far to deposit the balance to approach the Tribunal to direct the RTA concerned not to register any transfer of the crime vehicle and to seek for attachment of the crime vehicle or other property of the insured as an assurance for execution and recovery in the same proceedings or under revenue recovery as per the M.V Act, 1988 and also ask the Tribunal not to disburse the deposited amount to claimant (but for to invest in a bank) till such attachment order is made. However, after the same, the Tribunal shall not withhold the amount of the claimant, if there is any necessity to permit for any withdrawal but for to invest the

balance in fixed deposit in a nationalized bank. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

8) Consequently, miscellaneous petitions if any pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:13-11-2015
knl

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

-
-
-
-
-
-
-
-
-
-
-
-
-

M.A.C.M.A. M.P. No.6063 of 2012
IN/AND
M.A.C.M.A. (SR) No.2787 OF 2015

Date:13.11.2015

knl

[\[1\]](#) 2004 (3) SCC 297

[\[2\]](#) 2013 (7) SCC 62

[\[3\]](#) 2006 ACJ 789

[\[4\]](#) AIR 2001 SC 3218

[\[5\]](#) 2013 ACJ 1403