

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. M.P. No. 3857 OF 2011

IN / AND

M.A.C.M.A. No.2901 of 2015

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JUDGMENT:

The appellants no other than wife, sons and mother of deceased late N.Manik Reddy, filed this appeal having been aggrieved by the Order/Award of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District (for short, 'Tribunal') in O.P.No.829 of 2006 dated 24.02.2011 awarding compensation of Rs.6,43,000/- with interest at 7.5% per annum as against the claim of Rs.10,00,000/- for the death of N.Manik Reddy, filed under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act'). Impugning the compensation awarded by the Tribunal is utterly low, the appeal is filed with the delay of 11 days.

2) Heard learned counsel for appellants vis-à-vis learned standing counsel for 3rd respondent—insurer of both vehicles belongs to respondent Nos.1 and 2 respectively. The respondent Nos.1 and 2 remained ex parte before the Tribunal even impleaded in the appeal and dismissed for default for non-payment of process vide order dated 20.03.2015, is no way fatal to the maintainability of the appeal vide Division Bench expression of this Court in ***Meka Chakra Rao vs Yelubandi Babu Rao***^[1] and the same is recorded. The delay of 11 days in filing the appeal is condoned subject to condition that the appellants are not entitled to interest till

date on enhancement of compensation if any.

3) At request of both parties, the appeal is taken up for hearing. Perused the material on record.

4) Undisputedly, so far as the vehicle bearing No.AP 02G 9199 of respondent No.1 where the deceased was traveling as inmate, the policy covered by Ex.B1 is a package policy. Once it is a standard package policy as per the IRDA regulation, 2009 as held by the Apex Court in (Balakrishna 2013) the inmates risk is being covered by the policy without even showing any specific payment of premium. Here, no doubt, the permit is for own use to take any inmates. Whereas the contention including from the evidence on record, the defence of the Tribunal is it was taken on hire. No doubt, it is pointed out that PW.6 was suggested that he has taken on hire but he denied so also PW.2—so-called inmate. It is needless to say even from the finding of the Tribunal there is a permit violation in using not for own use but on hire and with overloading since nine or more persons were in all travelling on hire. Once the policy covers the risk the insurer cannot be exonerated but for to pay and recover for such violation of permit, more particularly from the expression of ***National Insurance Company Limited Vs. Swaran Singh & Others***^[2] ***S.Iyyappan Vs. United India Insurance Company***^[3] ***and Kusumlatha and others V. Satbir and Others***^[4]. The age of the deceased is 38 years as per Ex.A7—post mortem report, the multiplier applicable for the claim

under Section 166 M.V.Act as per **Sarla Verma vs Delhi Transport Corporation**^[5] and **Rajesh v. Rajbir Singh**^[6], is '15' whereas the Tribunal erred in taking the multiplier 16. However, the claimants are 4 in number, as per the decisions referred supra, $\frac{1}{4}^{\text{th}}$ to be deducted towards personal expenses, what the Tribunal taken and what PW.1 stated that the deceased was getting Rs.4,500/- per month, requires no interference. Once such is the case, the loss of dependency comes to Rs.6,07,500/- (Rs.4,500/- X $\frac{3}{4}$ X 12 x 15). Apart from it, to award Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate, Rs.20,000/- towards care and guidance to two minor children (each Rs.10,000/-) vide **Rajesh supra**, it comes to Rs.7,62,500/- is the just compensation, for which the appellants-claimants are entitled to. Apart from the finding of the Tribunal, there is equal negligence on the part of stationed vehicle also since the vehicle was parked without precautions and blinking lights. It is thus left open to the insurer to apportion in respect of the two policies if at all and thereby no further direction is required. For respective owners liability equally and for the insurer jointly for both vehicles to indemnify, the insurer has to pay and recover so far as 50% liability of the 1st respondent for violation of permit concerned for the remaining 50% to recover for nothing regarding the stationed vehicle got no any permit or with any policy violation.

5) Accordingly and in the result, the appeal is partly allowed, by enhancing the compensation from Rs.6,43,000/-

to Rs.7,62,500/-, however, the appellants are entitled to enhanced compensation of Rs.1,19,500/- with interest at 7.5% per annum only from today till the date of realization, while modifying from exoneration of the insurer, fixing liability to the extent of pay by the insurer of 50% compensation and then to recover from the 1st respondent sumo owner and so far as stationed vehicle liability of 50% compensation also to pay by insurer with owner with no recovery. The Insurer shall deposit said amounts within one month, failing which the claimants can execute and recover. It is made clear that the insurer is entitled, while depositing half of the amount payable for sumo vehicle of 1st respondent, from pay and recovery liability to approach the Tribunal to direct the RTA concerned not to register any transfer of the sumo vehicle and to seek for attachment of the sumo 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 MV 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.

6) There is no order as to costs in the appeal. Miscellaneous petitions, if any pending in this appeal, shall

stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.18.12.2015
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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M.A.C.M.A. M.P. No. 3857 OF 2011
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M.A.C.M.A. (SR) No.34754 of 2011

Date:18.12.2015

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- [\[1\]](#) 2001 (1) ALT 495 DB
 - [\[2\]](#) (2004) 3 SCC 297=2004-ACJ-1
 - [\[3\]](#) 2013 (7) SCC 62
 - [\[4\]](#) AIR 2011 SC 1234 = 2011 (2) SCJ 639
 - [\[5\]](#) 2009 ACJ 129
 - [\[6\]](#) 2013 ACJ 1403=(4)ALT-35(SC).