

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.1786 OF 2011

ORDER:

This appeal is filed challenging the order dated 25.08.2009 in O.P.No.627 of 2008 on the file of Motor Accidents Claims Tribunal-cum-Judge, Family Court-cum- Additional District Judge, Khammam.

2. Heard and perused the material on record.
3. The above said O.P. is filed under Section 166 of the Motor Vehicles Act, by the mother and brother of the unmarried deceased aged 19 years against the respondents, who are driver, owner and insurer of tractor and trailer bearing No.AP 20W4211 and 4212, claiming compensation of Rs.3 lakhs. The tribunal awarded Rs.2,00,000/- with interest at 7.5%p.a. with joint liability. Impugning the liability fixed against the insurer vis-à-vis the quantum preferred the appeal by showing the two claimants, driver and owner as respondents 1 to 4. The claimants and owner are contesting but not driver.
4. Ex.B1-policy shows Rs.25/- collected as workmen compensation to one employee and the policy speaks IMT endorsement 7, 21 and 39. So far as IMT 39 concerned, it is legal liability of an assessee under Workmen Compensation Act in respect of carriage of employees other than driver in the goods carrying vehicle to say the risk is covered. No doubt, it is the contention that the deceased was not supposed to sit on the tractor-trailor proportionately to the trailer to travel with the load which is prescribed as tractor is with one seating and there is violation of policy in allowing and thereby the deceased is nothing but unauthorized passenger. Once the policy issued to cover the risk of employees, the employee supposed to travel to carry the machinery loaded to the tractor-trailor that cannot be a shelter to the insurer. No doubt, a perusal from F.I.R., Charge sheet coupled with P.M.report shown as Exs.A1, A2 and A5 that the deceased while travelling by seating on the trailer with load of machinery from alleged rash and negligent driving of the driver at Jujjuraopet cross roads

at Palair, the deceased fallen down and died. The injuries as per P.M.report are including crush and contusion injuries to say under the wheels of the trailor. No doubt, from the above factual matrix, there is negligence of the deceased also contributed to the accident even taken there from as laid down by this Court in **United Insurance Company v. Yejju Mallamma**, even taken unauthorized passenger not entitled to travel on the trailor and fixed negligence of the deceased at 40% as crushed under the wheels after fall being a third party from that moment apart from policy covered the risk the insurer is liable to 60% . If that is the case, the earnings of the deceased claimed at Rs.3,000/- p.m., and the age of the deceased was 40 years, the multiplier applicable under Section 166 of the Act and as per **Sarla Verma v Delhi Transport Corporation** is '15' and not '16', and as per **Lata Wadhwa V State of Bihar**, minimum Rs.3,000/- earnings that can be taken into consideration. Out of Rs.3,000/- p.m. if half of the amount is deducted towards personal expenses as deceased was unmarried, then it comes to Rs.2,70,000/-(1500/-x12x15). Apart from the same, the claimants are entitled to Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate as per **Rajesh v. Ranbir Singh**. Thus in total, it comes to Rs.3,05,000/- and 60% therein comes to Rs.1,83,000/-, which is rounded to Rs.1,85,000/-, is the just compensation the claimants are entitled and what the Tribunal awarded is Rs.2,00,000/- requires interference of this Court.

5. Accordingly, the appeal is partly allowed by reducing compensation from Rs.2,00,000/- to Rs.1,85,000/- with interest @7.5% p.a. from the date of petition till realisation. No costs.
6. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:16-11-2015

pab

