

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**C.M.A.No.1129 of 2004**

**JUDGMENT :**

The claimants filed this appeal having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal–cum-V Additional Chief Judge, City Civil Court (*for short, 'Tribunal'*) in O.P.No.1404 of 1999 dated 07.10.2003, awarding compensation of Rs.50,000/-(Rupees Fifty thousand only) with interest at 9% per annum as against the claim of the claimant of Rs.3,00,000/- (Rupees Three lakhs only), in the claim petition under Section 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*).

2. Heard. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3. The contentions in the grounds of appeal as well as oral submissions by the appellants that the Tribunal below ought to have awarded the compensation as claimed by the appellants as it was moderate and reasonable, that the Tribunal having held that the appellants herein have lost their father and mother in the accident erred in awarding compensation under no fault liability, that the Tribunal below failed to appreciate the fact that P.W-2 was an eye witness to the accident and deposed before the Court that the accident occurred due to rash and negligence driving of the car, that the Tribunal below erred in concluding that the accident was a purely 'accidental one' and not due to the rash and negligent driving of the driver and no fault liability can be granted, that the Court below in spite of adducing sufficient evidence awarded a meager amount of compensation on surmises and conjectures and failed to award just compensation to the appellants and prayed to allow the claim as prayed for.

4. Whereas, it is the contention of the contesting 2<sup>nd</sup> respondent/insurer to the appeal in support of his contention before the Tribunal that the award of the Tribunal is even unjust for not even maintainable in awarding the no fault liability compensation, for this Court while sitting in appeal by re-appreciation of the evidence, there is nothing to interfere for want of cross-objections and hence to dismiss the appeal.

5. Now the points that arise for consideration in the appeal are:

1. *Whether the impugned order of the Tribunal requires interference by this court either to enhance the compensation or to negate Rs.50,000/- compensation awarded by the Tribunal without even cross-objections by the contesting 2<sup>nd</sup> respondent-insurer and if so with what observations?*
2. *To what result?*

**POINT-1:**

6. The facts not in dispute are that even as per the claim, the father of the claimants-cum-husband of the deceased was riding the car and it is conceded in the course of hearing from referring to the material on record though not depicted in the lower Court's award that he is the owner-cum-driver and needless to say there from he is also one of the beneficiary-claimant for the death of his wife that too while he was driving the vehicle, leave about his subsequent death natural or otherwise, when the claimants are no other than the children of him being the driver-cum-owner of the car, the deceased is no way a third party as laid down in ***Oriental Insurance Company Limited Vs. Meena Variyar*** and the claim thereby won't lie but for any claim under Consumer Protection Act or the like if there is a personal accident claim coverage from not mere Act policy. When such is the case but for to say for no cross-objections preferred by the insurer, Rs.50,000/- as compensation awarded by the Tribunal is arrived finality for nothing to negate as laid down in **Ranjana Prakash V. Divisional Manager**. Accordingly the point No.i is answered.

**POINT No.2:**

7. In the result, the appeal is dismissed. There shall be no order as to costs.

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

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**Dr. B. SIVA SANKARA RAO, J**

**Date: 10-04-2015**