

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.6423 OF 2012

IN/AND

MACMA No.2575 OF 2015

ORDER:

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This appeal is filed challenging the order dated 18.01.2012 in O.P.No.2139 of 2007 on the file of Motor Accidents Claims Tribunal-cum-XVI Additional Chief Judge-cum-II Additional Metropolitan Sessions Judge, Hyderabad.

2. MACMA.M.P.No.6423 of 2012 is filed under Section 5 of the Limitation Act, 1963 to condone the delay of (146) days in filing the appeal.
3. Heard the learned counsel for the appellant/insurer and also the learned counsel for respondents 1 to 3. Perused the material on record.
4. It is undisputedly, the 4th claimant, who is mother of the deceased died. It is the submission across the bar that other legal representatives are already on record, who are claimants 1 to 3 and the same is recorded for nothing abated from the death and no need of bringing legal representatives on record from substantial representation otherwise, that is so far as the 4th respondent of the appeal is concerned. The 5th respondent here in is owner of lorry, who remained exparte before the Tribunal and placed reliance in saying not a necessary party to the appeal and even impleaded and dismissed for default for non-service and not taking further notice to correct addresse on 09.03.2015, no way fatal to the maintainability of appeal vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**, the same is recorded.
5. It is at the request of both the parties, while allowing the delay condonation application and directing the Registry to number the appeal if other wise in order, taken up the appeal for final hearing.

6. The claim petition was filed by four claimants, no other than wife, two minor daughters and mother of the deceased by name, P.Venkateshwar Rao, against owner and insurer of lorry bearing No.AP 04T 5455, covered by Ex.B1-policy, undisputedly from the evidence of RW.1. The claim filed under Sections 166 and 163-A of the Act. The evidence on record from issue No.1 shows that there is a rash and negligent driving of driver of crime lorry of the

1st respondent of the claim petition to say, it is false liability disposed by the tribunal under Section 166 of the Act. So far as that finding of the tribunal is not in dispute under decree and award of the tribunal in the said O.P. but for what is impugned in the decree as the quantum awarded by the tribunal at Rs.7,32,000/- with interest at 7.5%p.a. as well as the liability to the extent of pay and recover in claiming as exoneration and the quantum as excessive and arbitrary.

7. Coming to the merits of the appeal, what the charge sheet placed reliance by the claimants covered by Ex.A5-charge sheet placed reliance by RW.1 employee of the insurer in saying the police charged the driver for not having valid driving license and so also owner. It is the submission that the driver has no license at all. For that the only evidence placed reliance is Ex.A5-charge sheet. No doubt, Motor Vehicle Inspector also from column No.17 covered by Ex.A4, M.V.I.Report, there is no driving license there from the tribunal found including from evidence of RW.1 of the charge sheet is clear as same can be placed reliance by the insurer from the material of the claimants vide **National Insurance Company Ltd. v. Rattani and others**. However, the fact remains in the absence of other evidence of no license, what material shows charge sheet for not having valid driving license, the tribunal is right in fixing joint liability by referring expressions **Insurance Company Limited Vs. Swaran Singh & Others**, and **Kusum Lata ..vs. Satbir** is also proposition as per the expression of the Apex Court in **S.Iyyappan Vs. United India Insurance Company**.

8. Having regard to the above, there is nothing to interfere so far as the finding of the tribunal of pay and recovery is concerned.

9. Coming to the other contention that quantum as excessive is concerned, even taken from the avocation of the deceased is not in dispute as he was doing catering business under the name and style of Sri Sai Caterers at Rahamathnagar, Yousufguda, Hyderabad. The tribunal taken the annual income of the deceased at Rs.62,000/- in all as it is self-employment avocation. As per **Rajesh and others Vs. Ranbir Singh and others**, even for self same employee, prospective earnings can be taken into consideration and from the age above 40 years, if 30% taken and even deduction minimum earnings as on the date of accident in June, 2005 at Rs.4,200/- with 30% increase therein of prospective earnings, it comes to Rs.5,460/-p.m. and from the four claimants, 1/4th is deducted towards personal expenses, it comes to Rs.4,095/- p.m. and the loss of dependency comes to Rs.6,87,960/- (Rs.4,095/-x12x14 (multiplier as per **Rajesh(supra)** and **Sarla Verma v Delhi Transport Corporation**). Apart from the same, the claimants are entitled to Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate as per **Rajesh and others Vs. Ranbir Singh and others**, Rs.10,000/- towards care and guidance to the minor children, total comes to Rs.8,32,960/- and what the Tribunal awarded is Rs.7,32,000/- with interest at 7.5% p.a. is no way excessive but for low but for no cross objections to enhance.

10. Accordingly, the appeal is dismissed. No costs.

11. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:13-11-2015

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