

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.1270 of 2009

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JUDGMENT :

Heard learned counsel for appellant Nos.1 and 2, no other than the parents of the deceased and heard learned counsel for respondent No.2-Insurance Company, represented by Ms. Maamu Vani.

2. Perused the impugned order of the learned Motor Accidents Claims Tribunal-cum-VI Additional District Judge (F.T.C.), Gooty (for short, 'the Tribunal') in O.P.No.195 of 2006 dated 20.02.2009 for the claim petition filed under Section 166 of the Motor Vehicles Act (for short, 'the Act') for Rs.2,00,000/- and the Tribunal awarded as prayed for. However, by fixing liability against the owner of the vehicle in saying the deceased was unauthorized passenger in the goods vehicle and the policy does not covered the risk and there is no statutory liability on the part of the insurer under Section 147 of the M.V.Act and referred to the conclusion with the expressions in **National Insurance Company v. Asha Rani, Oriental Insurance Co. Ltd., v. Devireddy Konda Reddy, National Insurance Company Limited v. Ajit Kumar and National Insurance Company Limited v. Valjit Kaur.**

3. A perusal of the award of the Tribunal from the material on record shows the claim as if the deceased was travelling in the vehicle with suit case, which he is carrying, no way called as goods, but for luggage.

4. Having regard to the above, there is nothing to interfere with the award of the Tribunal so as to exonerate the insurer, thereby the appeal is dismissed.

5. So far as compensation is concerned, no doubt as pointed out by

the appellants that the Tribunal observed from the calculations that claimants are entitled to Rs.2,88,000/-. In fact, as per the Apex Court's expression in **Rajesh v. Rajbir Singh**, the claimants are entitled just compensation but not be confined to the claim made. Thereby, the claimants are entitled to Rs.2,88,000/- against respondent No.1. However, before executing the decree, the claimants have to pay deficit court fee. Without payment of the deficit court fee, the Tribunal cannot be permitted the claimants to execute for the enhanced claim amount.

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

Dr. B. SIVA SANKARA RAO, J

5th November 2015

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