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

**MACMA No.740 OF 2009**

**JUDGMENT:**

The appellants are no other than the claimants, wife and minor son of the deceased, Srinivasa Rao aged about 25 years, as per the Post Mortem Certificate. The claim in O.P. No.1198 of 1999 was filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for compensation of Rs.2,40,000/- against the owner and insurer of the Lorry bearing No.AP 26 T 9134. The averments in the claim petition were that the deceased as a cleaner proceeding in the Mini Lorry bearing No.AEV 9759, the opposite coming Lorry supra of the first respondent in a rash and negligent manner dashed against the Lorry in which the deceased was working as a cleaner, as a result the Lorry bearing No.AEV 759 turned turtle and the deceased travelling as a cleaner in the Lorry and owner of the Lorry sustained injuries and was succumbed therefrom. In the claim, it is made that he was earning Rs.2,000/- per month as on the date of accident. The tribunal, by accepting the contention of the insurer of the Lorry bearing No.AP 26 T 9134 and no independent witness was examined to prove that the accident was due to rash and negligent driving of the Lorry of first respondent, dismissed the claim. In fact, the wife of the deceased was examined, though not an eye witness and placed reliance on Exs.A.1 to A.5, of which Ex.A.1 is the certified copy of FIR registered against driver of the Lorry bearing No.AP 26 T 9134, and Ex.A.2 is the certified copy of Charge Sheet, after investigation the police filed charge sheet against one Naka Nageswara Rao, driver of the Lorry bearing No.AP 26 T 9134 for the offence under Section 304-A IPC, Ex.A.3 is the MVI report shows the crime Lorry damaged and separated from the chassis, V Bolts broken and front left side beam protection damaged and vehicle cannot be inspected by rod testing, however inspected break condition and found no disconnections

02. When this material is sufficient to say the deceased died as a

cleaner of the Lorry and the involvement of the two lorries, of which the first respondent Lorry supra, if at all to contend by the 2nd respondent - the insurer stepping into the shoes of the first respondent - owner as if there is any composite negligence of the Lorry, whether the deceased was traveling and that is not even finding of the tribunal.

03. In fact, the latest expression of the Apex Court in **Khenyei vs New India Assurnace Company Limited & Others**[1] held that even two vehicles involved, if the other vehicle is not impleaded, the claim is not dismissed as any of the joint tort feasor can be made liable and it is left open, after payment by the insurer indemnifying the owner of one of the vehicle, against whom the claim is maintained and claim cannot be dismissed on that ground much less liability to be apportioned to proceed further.

04. Once the law is very fairly settled, subject to such contention if at all the counsel for the second respondent Sri N. S. Bhaskara Rao raised, left open to satisfy the claim and proceed against the owner and insurer of the Lorry bearing No.AEV 9759 for any composite/ contributory negligence in the same claim petition and not by separate proceedings by following guidelines **Oriental Insurance Co. Ltd vs Shri Nanjappan And Others**[2] as laid down by the Apex Court in Khenyei's case referred to supra. Thus the respondents, from the policy in force covered by Ex.B.1 not in dispute, are liable to pay compensation to the claimants for the death of the deceased.

05. Now coming to the compensation, the deceased as per Ex.A.4 P.M.E. report aged about 25 years, the claim is under Section 166 of the Act, the multiplier for the persons aged between 26 to 31 is '17', up to the age 25 is '18', even taken the age of the deceased as 26 years, adopted multiplier '17', PME report speaks more than 25 years. The earnings as on the date of accident even claimed by the claimants as Rs.2,000/-, if 2/3rd of the earnings to be deducted towards personal expenses, which comes to Rs.2,000/- x 2/3 x 12 x 17 = Rs.2,72,000/-. Thus, the claimants

are entitled for an amount of Rs.2,72,000/- towards loss of earnings. Apart from that the claimants entitled for an amount of Rs.25,000/- towards care and guidance of the minor children, Rs.10,000/- towards loss of estate, Rs.10,000/- towards funeral expenses and the first claimant is entitled for an amount of Rs.1,00,000/- towards consortium. In all, the claimants are entitled for an amount of Rs.4,17,000/- with interest @ 7.5 % per annum only from the date of appeal till realisation.

06. Accordingly, the appeal is partly allowed. No costs.

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

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

**Dt.11.12.2015**

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[1] 2015(9) SCC 273

[2] I(2004)ACC 524 (SC),