HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.Nos.950 and 956 OF 2004

COMMON JUDGMENT:

The United Insurance Company-the 3rd respondent (in both the petitions O.P.Nos.151 of 2002 and 152 of 2002) among the three respondents including the driver and owner of the lorry bearing No. AAT 2445 in the respective claims, out of which O.P.No.151 of 2002 is filed by husband and three minor children of deceased Maissavva aged more than 38 years under Section 166 of the Motor Vehicle Act, 1988 *(for short, 'the Act')* for a claim of Rs.2,00,000/- and the O.P.No.152 of 2002 filed by the 4 claimants viz; husband, major son, two minor sons and one minor daughter of deceased Kanakavva, also claimed as aged about 38 years for a claim of Rs.2,00,000/- on the file of learned Chairman of the Motor Accidents Claims Tribunal–cum-II Additional District Judge, Karimnagar, for which the tribunal awarded compensation of Rs.1,36,000/- in O.P.No.151 of 2004 and Rs.1,46,000/- in O.P.No.152 with interest at 9% p.a. respectively by fixing joint liability against the driver, owner and Insurer of the crime lorry by award dated 09.05.2003, impugning the same, filed the present appeals viz; CMA No.950 of 2004 against O.P.No.151 of 2002 and CMA No.956 of 2004 against O.P.No.152 of 2002 with the common contentions that the two deceased persons were unauthorized passengers of the goods vehicle i.e. lorry for their boarding and travelling and thereby the Ex.B.1 policy not covers the risk and the tribunal gravely erred in fixing joint liability against the Insurer, hence to exonerate the insurer by setting aside the award. The learned standing counsel for the Insurance Company in both the appeals reiterated the respective contentions during course of hearing.

2. Whereas, it is the contention of the learned counsel for the claimants as respondents in the two appeals respectively that the

award of the tribunal holds good for this Court while sitting in appeal there is nothing to interfere.

3. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in both the appeals.

4. Now the common points that arise for consideration in both the appeal are:

1. *Whether the awards of the tribunal fixing joint liability against the Insurer is unsustainable and requires interference by this Court while sitting in appeal against the awards and if so what observations?*

2. *Whether the compensation awarded by the Tribunal is unjust and requires interference by this Court while sitting in appeal against the awards and if so what is just compensation to arrive and with what rate of interest?*

3. *To what result?*

***Point No.*1**:

5. As common question of law involved in both the claims by the same Insurer and outcome of same accident, both the appeals are taken up together.

6. As can be seen from the inquest report(Ex.A.2) as well as the Postmortem report(A.3) in the two appeals, the deceased persons boarded the goods lorry with cement load and were travelling therein by sitting. They were not even shown as coolies under the owner of the vehicle but for with the claim that they boarded the lorry with already existing cement load by claiming as if they midway boarded with custard apple boxes. Thus, they are no other than unauthorized passengers for the fact that clause © of proviso (i) to Section 147(1) of the Act, speaks that only one person can travel either as owner or as attendant of the goods in a goods vehicle even to cover under the Act policy. There is otherwise any risk is to be covered under the proviso(ii) to Section 147(1) of the Act, for no contractual obligation to

cover the risk under the Ex.B.1 policy. The tribunal did not properly advert all these aspects. The law is fairly settled in this regard more particularly from the expressions in **NIC Vs. Prembhai**[1], **NIC Vs. Sanjeev Kumar Samrat**[2], **NIC Vs. Cholleti Bharatamma**[3] **NIC Vs. Asharani**[4] and **NIC Vs. Saju P.Paul**[5]. However, the fact remains here that they boarded and travelled as unauthorized passengers. From what is discussed supra, the accident occurred is not while they were continuing in the capacity of unauthorized passengers but for the lorry with cement load of which they were boarded and were travelling turned turtle by dashing against boundary stone on right side due to which they fell down underneath the cement load and sustained injuries and died. The moment they fell down they seized to be the unauthorized passengers and become third parties as it is after their fall and underneath the cement load for the said fall by sustaining of injuries due to asphyxia they breathed the last. The law is fairly well settled in this regard including from the expression of this Court in **United India Insurance Company Vs. Kuruva Yejji Mallamma**[6]. Now though they were unauthorized passengers till they fell down from the lorry, they became third parties after fell down and the accident was occurred when they were in the capacity of the third parties and met with death as referred supra including from the prepositions supra. It is also important to note that but for their boarding being allowed as unauthorized passengers and travelling in that capacity they could not met with death but from the fall they became third parties. It is to say the Insurer's liability is only when they met with death in the capacity of the third parties from the Act policy. It is just to apportion 50% contribution to them in the capacity of unauthorized and 50% the liability of the Insurer for the both in the capacity of the third parties to indemnify the driver and owner of the vehicle.

7. Now coming to the quantum of compensation in both the

appeals is concerned, in O.P.151 of 2002 is concerned, 4 claimants viz., husband and three minor children and in O.P.No.151 of 2002, among 5 claimants only 4 claimants viz., husband and three minor children are dependents and as the claim is under Section 166 of the MV Act as laid down in **Sarla Verma v Delhi Transport Corporation**[7] and the accident was dated 04.10.2000, even taken the earnings of the deceased at Rs.3000/- per month as per **Latha Wadhwa Vs. State of Bihar**[8] at the time of accident, if 1/4th deducted towards personal expenses of Rs.2,250/-x 12x even multiplier 14.5 taken from their age about 40 years(in both the appeals), it comes to Rs.3,91,500/- + Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.30,000/- towards care and guidance to the minor children in all comes to Rs.5,56,500/- to which 50% liability of the Insurer comes to Rs.2,78,250/-, hence what the tribunal awarded in both the claim petitions is no way excessive but for no cross-objections to enhance and even this Court is not inclined to reduce rate of interest of 9% awarded by the tribunal in both the appeals in view of the compensation awarded is low. Accordingly, Point No.1 is answered.

POINT -2:

8. In the result, both the appeals CMA Nos.950 and 956 are partly allowed by setting aside the joint liability of the Insurer, fixed only to the extent of 50%, however, by confirming quantum of compensation and rate of interest. No order as to costs. In other respects awards of the tribunal holds good. Miscellaneous petitions, if any, pending in these appeals shall stand closed.

Dr. B. SIVA SANKARA RĀO, J

Date:09.02.2015.

VVR

[1] LAWS(SC)-2005-4-59

[2] 2013 ACJ page 1

[3] 2008 ACJ Page 268

[4] 2003 ACJ page 1 SC

[5] 2013(2) SCC page 41

[6] 2007 ACJ 1735

[7] 2009 ACJ 1298.

[8] AIR (2001) SC 3218