HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.3860 OF 2004

JUDGMENT:

The claimants-parents of the deceased girl by name Attula Anusha of 5 years old who died in the road accident due to rash and negligent driving of the 1st respondent of the claim petition, filed this appeal, having been aggrieved by the Order/Award, dated 05.07.2004, on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum–VI Additional District Judge, Visakhapatnam, (*for short, 'Tribunal')* in M.O.P.No.648 of 2002 filed under Section 166 of the Motor Vehicle Act,1988 *(for short, 'the Act')* for compensation of Rs.1,54,000/- (Rupees one lakh fifty four thousand only) towards special and general damages for the death of their daughter since awarded Rs.70,000/-(Rupees seventy thousand only) by fixing liability with the 3rd respondent-owner of the crime car bearing No.AP 31 T 6931 with the contentions in the grounds of appeal that the tribunal ought to have awarded the compensation as per the M.V.Act and as prayed for, that the tribunal ought to have fixed liability to all the respondents since the policy is in force on the date of accident, hence, to set aside the award passed by the tribunal by allowing the appeal as prayed for. Learned counsel for the appellant-claimants reiterated the said contentions during course of hearing.

2. The case against the 1st respondent is dismissed for default as per Court order dated 18.03.2011, the 2nd respondent(original driver of the crime vehicle) who remained exparte before tribunal, even served with notice, did not turn up before this Court, taken as heard. Whereas, the learned counsel for the 3rd respondent-owner and 4th respondent-Insurer submits that there is nothing to interfere with the award of the tribunal for this Court while sitting in appeal, hence, to dismiss the appeal.

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

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

1. *Whether the impugned award dated 05.07.2004 of the tribunal exonerating the Insurer on the contention of the 1st respondent-driver by name Mullu Demudu has no valid driving license and on the quantum of Rs.70,000/- awarded by the tribunal out of the claim*

of Rs.1,54,000/- in the claim petition filed under Section 163-A of the M.V.Act, is unsustainable and if so, the Insurer can be fastened with the liability, to what extent, what compensation and what observations?

2. *To what result?*

POINT-1:

5.Now coming to decide whether the insurer can be exonerated from liability to indemnify the insured to the third party claimants concerned, the Apex Court in N***ational Insurance Company Limited Vs. Swaran Singh National Insurance Company Limited Vs. Kusum Rai*** **Kusumlatha Vs. Satbir and Others** ***Oriental Insurance Company Limited Vs. Nanjappan & Others*** **United Indian Insurance Company Limited Vs. Lehru New Indian Insurance Company Limited Vs. Kamala Sohan Lal Passi Vs. P.Sesha Reddy and S.Iyyappan Vs. United Indian Insurance Company** held that the insurer is not liable to indemnify the owner, when the driver has no license to drive the crime vehicle. On perusal of **Swaran Singh** (Supra) driver having no license at all driving the vehicle knowingly and conscious knowledge of the owner as a fundamental breach and the owner of the vehicle has a responsibility to see whether driver has a license to drive. It is further observed that it is the obligation on the part of owner to take equitable care to see that the driver had an appropriate license to drive the vehicle. In Kusumlatha(supra) it was held that the Tribunal has got inherent power to issue such directions to insurer to pay and recover. Even in the latest expression of the Apex Court in **S.Iyyappan Vs. United India Insurance Company** a two judge bench of the Apex Court held that even though the insurer has taken the defence that there is a breach of conditions of the policy excluding from liability, from the driver is not duly licensed in driving the crime vehicle when met with accident, third party has a statutory right under Section 149 read with 168 of the Act to recover compensation from insurer and it was for the insurer to proceed against the insured for recovery of amount paid to third party in case there was any fundamental breach of condition of Insurance policy.

6. From the above legal principles and in the factual matrix of case, the fact that the accident was the result of the rash and negligent driving of the driver of the crime vehicle belongs to the 3rd respondent insured with the 4th respondent covered by Ex.A.4/B-1 policy is proved from the evidence on record. Having regard to the above, it is the respondents 2 to 4 (original driver, owner and Insurer) are jointly and

severally liable to pay compensation to the claimants and then it is for the Insurer initially to pay and then to recover from the original driver and owner of the vehicle by filing execution petition in the same award.

7. Coming to the quantum, the deceased girl was aged 5 years at the time of accident even as per the Ex.A.2 post mortem report. The claimants are the parents of the deceased girl. The record shows that the deceased girl is the only issue to them and they also lost future hope of having children and their caretaker. The claim is for Rs.1,54,500/-. Even the child in the womb as per Section 140 of the M.V.Act for no fault liability when can get Rs.50,000/- as compensation, for the child aged about 5 years with prospective increase including for love and affection the parents lost consequent upon the death of the child in the motor accident, would even get more. Thus, what the compensation awarded by the tribunal is no way excessive but utterly low. Hence, the compensation is awarded of Rs.1,54,500/- as prayed for by enhancing from Rs.70,000/- with interest at 7.5% p.a. reducing from 9% p.a. awarded by the tribunal which is excessive from the settled proposition of law in **TN Transport Corporation v. Raja Priya,** and **Rajesh** (supra) as held that while awarding reasonable rate of interest the steep fall in the bank interest rate since past several years has to be kept in mind and awarded therefrom interest at 7.5% p.a. as reasonable. The appellate Court also got the discretionary power under Order LXI Rule 33 C.P.C to award reasonable rate of interest from the drastic fall in bank rate of interest in bank rate as laid down by the Apex Court in ***DDA Vs. Joginder S. Monga.*** Thus under Section 171 of the MVAct interest is awarded at 7.5% per annum from date of claim petition till realization. Accordingly, point No.1 is answered.

Point No.2:

8. In the result, the appeal is partly allowed by enhancing the compensation from Rs.70,000/- to 1,54,500/-as prayed for, however reducing the rate of interest from 9% to 7.5% p.a. and fixing liability to the respondents 2 to 4 (original driver, owner and Insurer of the crime car) from the date of claim petition till the date of realization. The 4th respondent-Insurer to pay initially to the claimants and then to recover from the 2nd and 3rd respondents(driver and owner). The respondents are directed to deposit said amount within one month from the date of receipt of this judgment, failing which the claimants can execute and recover. It is made clear from

the settled expressions of the Apex Court in **Lehru** and **Nanjappan** (supra) that the insurer is entitled, while depositing the amount payable, if not deposited or paid any amount so far to deposit the balance, to approach the Tribunal to direct the RTA concerned not to register any transfer of the crime vehicle and to seek for attachment of the crime vehicle or other property of the insured as an assurance for execution and recovery in the same proceedings or under revenue recovery as per the MV Act, 1988 and also ask the Tribunal not to disburse the deposited amount to claimants (but for to invest in a bank) till such attachment order is made. However, after the same, the Tribunal shall not withhold the amount of the claimants, if there is any necessity to permit for any withdrawal but for to invest the balance in fixed deposit in a nationalized bank. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 23-01-2015

Vvr