**HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**

**CMA No. 1273 of 2004**

**and**

**Cross Objections (SR) No.39284 of 2004**

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**Common Judgment**:

The second respondent – insurer among the two respondents including the owner of the passenger Auto bearing registration No.AP-12-U-1240, impugning the award and decree of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Kurnool (for short 'the Tribunal'), dated 12.01.2004, granting compensation of Rs.5,15,000/- with interest at 9% p.a., from the date of petition till realization with joint and several liability against the insurer also, in the claim preferred by the six claimants no other than the wife, three major daughters and two major sons of the deceased Mohd. Abdul Khayyum, an Urdu teacher aged about 56 years since born on 22.05.1946, by the date of accident on 03.11.2001 near Nagalooti cross roads between Midthur and Nandikotkur, under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for a compensation of Rs.10,00,000/-, due to rash and negligent driving of the driver of the Auto supra of the first respondent insured with the second respondent under Ex.B1 policy, impugning the said award by fixing joint liability as unsustainable, contrary to law and that the multiplier applied and multiplicand arrived are also unsustainable, the Tribunal having held the driver has no valid driving licence as per the evidence of RW.1 employee of RTA concerned with reference to Ex.B2 in saying remedy of the insurer is to recover from the insured in the discussion portion, went wrong in not reflecting in the operative portion much less with recovery directions if at all the insurer to be made liable for otherwise no liability for violation of the policy and permit and the rate of interest is also excessive and exorbitant to reduce, hence to allow the appeal.

2. Pending the appeal the claimants – respondents 1 to 6 filed cross objections supra with contentions (since delay condoned and taken on file already) that the Tribunal ought to have awarded the compensation prayed for of Rs.10.00 lakhs and went wrong in applying wrong multiplier and in arriving wrong multiplicand, hence to allow the cross-objections while dismissing the appeal of the insurer.

3. Learned counsel for the appellant – insurer reiterated the contentions in the course of hearing with reference to the grounds of appeal supra and the proposition of law in this regard, in seeking to dismiss the cross-objections and allow the appeal reducing compensation and rate of interest with pay and recovery liability.

4. Perused the material on record.

5. The parties are being referred to as arrayed before the Tribunal for the sake of convenience.

6. Now the points that arise for consideration are:

1. Whether the compensation awarded by the Tribunal is either excessive and exorbitant to reduce or utterly low to enhance, so also the rate of interest to reduce and whether the fixing of joint liability on the insurer is unsustainable and if so whether to exonerate or to fix pay and recovery liability from the policy admittedly covered therein and with what observations?
2. To what result?

7. **Point No.1**:

There is no dispute on the manner of accident including from the FIR given by one of the inmates of the passenger Auto, which is LMV transport vehicle belongs to the first respondent insured with the second respondent, while swerving the vehicle from the condition of the utterly not roadworthy left tyre bursted and by turned turtle is also nothing but negligent driving with high speed, as had he (driver) been cautious while driving, the accident could be averted, suffice to say the accident was the result of the rash or negligent driving of the driver of the first respondent of the crime Auto for maintainability of the claim under Section 166 of the Act as rightly concluded by the Tribunal.

8. Coming to the quantum of compensation, rate of interest and liability of the insurer concerned, as evidenced by the record including from Ex.B2 and evidence of RW.1, employee of RTA concerned, for the Auto LMV transport the driver possessed only LMV non-transport. It is not automatic, even after prescribed period lapsed, to get LMV transport but for after satisfying with the tests and its qualification as envisaged by Section 9 of the Act. Thus, even he got any eligibility to apply and obtain transport driving licence with the non-transport driving licence he possessed, that is not sufficient in the absence of duly qualified and granted the transport driving licence to drive the transport vehicle and then it does not matter even size of the vehicle is one and the same of no difference between transport and non-transport, when there is a clear difference in use of the vehicle and nature of use and plying including in highways and for carrying passengers with the risk on their lives. However, there is nothing in the factual matrix to show the owner consciously and wilfully by knowingly and deliberately entrusted the vehicle to the driver without valid driving licence, to give any credence to the contention to exonerate the insurer in toto from liability, apart from, that itself is not a ground also when the policy issued is not in dispute and the risk covered to indemnify the third party by the insurer not in dispute for any violation of the conditions of the policy from non-possessing of valid driving licence only enables the insurer to pay and recover as per the settled expressions of the Apex Court, particularly, vide decisions of the Apex Court in **United India Insurance Co.Ltd. v. Lehru, Oriental insurance Company Limited v. Nanjappan and others, National Insurance Company Limited v. Swaran Singh and others, Kusumlatha and others v. Satbir and others** and **S. Iyyappan v. United India Insurance Company**.

9. Thus, though, the Tribunal observed the remedy is to pay and recover, for the driver was not possessing valid driving licence, went wrong in not incorporating the same in the operative portion of the award, therefore, to that extent it requires clarification by allowing the appeal, so also regarding rate of interest since 9% p.a., awarded is excessive and exorbitant to reduce to 7.5% as per the settled

expressions of the Apex Court, in particular of **Tamil Nadu Transport Corporation Ltd., v. S. Rajapriya**, and **Rajesh and others v. Rajbir Singh and others.**

10. So far as the quantum of compensation awarded by the Tribunal of Rs.5,15,000/- is concerned, there is nothing to interfere, for the Tribunal rightly arrived the same, including from the factum out of the six claimants but for wife others are majors and it is not specified as to how many of the daughters still unmarried by the time the accident took place, to say any of them are dependant on the deceased for married daughters are not equally major sons but for sufferers to deduct 1/3$^{rd}$ only as concluded by the Tribunal, so also not taking the earnings with any prospective increase from the life span and remaining period to superannuation, but for to increase the loss of consortium first claimant is entitled besides funeral expenses and loss of estate as per the expressions of the Apex Court in **Rajesh's case** (supra), even on consideration of the cross-objections of the claimants. It is for the reasons that the deceased was born on 22.05.1946 and by the date of accident he was more than 55 years. For a person aged between 56 to 60 as per **Sarla Verma v. Delhi Transport Corporation**, the multiplier applicable is '9'. The Tribunal no doubt taken the multiplier '8'. As per Ex.A6 salary certificate the gross earnings of the deceased was Rs.12,504/-. The deceased is therefrom as Government Urdu teacher left over service for superannuation for 2 ½ years as also observed by the Tribunal. The Tribunal therefrom no doubt not right to take the left over service calculation at one pedestal out of 8 for 2 ½ years and for the remaining life span only at 4 ½ years on the other pedestal as for the entire remaining life span from 56 years by the time of accident is criterion to apportion. Thus, out of the '9' multiplier, it is just to take for the left over service multiplier '1' the maximum. As rightly concluded by the Tribunal otherwise of not a case for prospective increase for the service is hardly 2 ½ years. Having regard to the above out of Rs.12,504/- gross even taken net at Rs.11,000/-, if 1/3$^{rd}$ deducted that comes to Rs.7,333/- x 18 months = Rs.1,31,994/- (rounded to Rs.1,32,000/-) + remaining 90 months by taking the earnings as taken by the Tribunal at Rs.6,000/- as otherwise even pension benefits the family entitled also and after 1/3$^{rd}$ deduction Rs.4,000/- x 90 = Rs.3,60,000/-, total comes to Rs.4,92,000/-. Thus, what the Tribunal for the loss of earnings arrived of Rs.5,04,000/- no way requires enhancement pursuant to the cross-objections, but for to reduce if at all from the appeal contentions, however, from what the guess work

arrived instead of reducing retained said Rs.5,04,000/-. It is needless to say as per **Rajesh's** case (supra) the loss of consortium Rs.1,00,000/-, funeral expenses Rs.25,000/- and loss of estate Rs.10,000/- the claimants additionally entitled in all, it comes to Rs.6,39,000/- is the just compensation to allow the cross-objections and appeal to that extent by enhancing from Rs.5,15,000/- to Rs.6,39,000/- and by reducing rate of interest from 9% p.a., to 7.5% as detailed supra. Accordingly, point No.1 is answered.

11. **Point No.2**:

In the result, the appeal and the cross-objections are allowed in part while enhancing the quantum of compensation from Rs.5,15,000/- to Rs.6,39,000/- and by reducing the rate of interest from 9% p.a., to 7.5% p.a., from the date of filing claim petition till realisation with joint and several liability of the insurer and insured (respondents 1 and 2) to pay by the insurer and then to recover. The respondents shall deposit said amount within one month, failing which the claimants can execute and recover. It is made clear from the settled expressions of the Apex Court in **Lehru's** case (supra) and **Nanjappan's** case (supra) that the insurer is entitled, while depositing the amount payable, if not deposited or paid any amount so far to deposit the balance and 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. There is no order as to costs.

12. Consequently, other Miscellaneous Applications, if any, pending in this appeal shall stand closed.

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

Date: 17th April 2015

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