HONOURABLE DR.JUSTICE B.SIVA SANKARA RAO

CMA No.868 OF 2004

JUDGMENT:

The 2nd respondent-insurer among the two respondents including the owner of the lorry bearing No.MTB 7576, of the claim maintained by five claimants no other than wife, two minor children and parents of the deceased Venkatesh aged about 23 years as per Ex.P.4 P.M. report, of the motor accident dated 24.02.2000, claimed ran over by the crime lorry, in the claim maintained under Section 166 of the Motor Vehicles Act for Rs.3,00,000/- since awarded by the Tribunal of Rs.1,87,800/- with interest at 9% per annum, vide award dated 11.09.20003, impugning the same, with the contentions in the grounds of appeal as well as the submissions during hearing by counsel for the appellant-insurer maintained that the Tribunal gravely erred in fixing liability on the insured instead of exonerating, while observing pay and recovery liability not reproduced in the result portion for violation of policy conditions and permit in taking the chloral hydrate which is not permitted to carry the liquid in the vehicle and that the compensation is also excessive and rate of interest is also excessive and hence to exonerate or otherwise reduce the quantum and rate of interest with liability of pay and recovery.

2 . The first respondent to the claim petition (owner) of the vehicle even unserved, as he remained *ex parte* before the Tribunal, he is even not impleaded in the appeal that he is not fatal thereby the same is recorded as per the submission of the counsel for the appellant. The respondents 1 to 5 of the appeal the claimants even failed to attend. Hence taken as heard.

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

4. Now, the points that arise for consideration are:

1. Whether the compensation awarded by the Tribunal fixing joint liability on the insurer is unsustainable and otherwise quantum and rate of interest are excessive to reduce and with what observations?

2. To what result?

–

5. POINT NO.1:

–

The manner of accident and outcome of rash and negligent driving of the driver of the crime lorry of the first respondent insured with second respondent in which the deceased met with death ran over by the lorry on road side not in dispute, but for the dispute relating to the liability of the insurer fixed by the Tribunal jointly and also on the quantum of compensation and rate of interest alternatively seeking pay and recovery. Coming to the joint liability, as the Tribunal itself fixed liability to the extent of pay and recovery for the violation of the permit that is proved from the evidence of R.W.1, employee of the insurer with reference to Exs.B.1 to B.5 of which Ex.B.4 is the investigation report, there is nothing to interfere with that finding of the Tribunal in the appeal, impugned by the insurer but for clarifying for not reproduced in the operative portion as pay and recovery liability. Now, coming to the quantum of compensation, the deceased was aged about 23 years, the accident was dated 24.02.2000 and the minimum earnings of the deceased as per **Lata Wadhwa v State of Bihar** when required to be taken at Rs.3,000/- per month and from the evidence on record, the Tribunal taken only at Rs.2,100/- per month and even taken the same it is not the 1/3rd deduction but from the claimants 5 in number 1/4th as per **Sarla Verma v Delhi Transport Corporation** comes to Rs.12,989/- it comes to Rs.1575/- X 12 X 18 = 3,40,200/- + 1,55,000 as per **Rajesh v. Rajbir Singh** loss of consortium to first claimant Rs.1,00,000/- funeral expenses Rs.25,000/-, loss of estate Rs.10,000/- and care and guidance to the two minor children each Rs.10,000/- = Rs.4,95,200/- and what the Tribunal awarded of Rs.1,87,800/- is no way excessive but for utterly low and for want of cross objections the Court cannot enhance. Now, coming to the rate of interest 9% awarded by the Tribunal contended as excessive as per **TN Transport Corporation v. Raja Priya** and Rajesh (supra) interest at 7.5% per annum is just and reasonable while confirming the 9% per annum interest from the date of claim petition till the date of appeal and from the date of appeal till date of realization reduced to 7.5% per annum. Accordingly, point No.1 is answered.

6. **POINT NO.2:**

In the result, while allowing the appeal in part and while confirming the pay and recover liability on the insurer only by making it clear in the operative portion and also by confirming the quantum of compensation and rate of interest from date of claim petition till filing of the appeal; however by modifying the rate of interest from 9% p.a. to 7.5% p.a. from the date of appeal till the date of realization. The insurer shall deposit the said amount within one month, failing which the claimant can execute and recover. It is made clear from the settled expressions of the Apex Court in **United India Insurance Co. Ltd. V. Lehru** & ***Oriental Insurance Company Limited Vs. Nanjappan & Others***) that the insurer is entitled, while depositing the amount payable, if not deposited or paid any amount so far to deposit, for 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 recover 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 claimant (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 claimant, 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.

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

Dr.B.SIVA SANKARA RAO,J

Date: 6th March, 2015

PNV