HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.2660 OF 2015

JUDGMENT:

The claimants, parents and younger sister of the deceased Narender aged about 23 years, preferred this unnumbered appeal aggrieved by the award dated 06.04.2009 passed by the learned Chairman, the Motor Accidents Claims Tribunal-Cum-Additional Chief Judge-cum-II Additional Metropolitan Sessions Judge, Hyderabad, in O.P.No.1663 of 2007 filed under Section 166 of the Motor Vehicle Act,1988 *(for short, 'the Act')*, for the claim of Rs.4,00,000/- together with interest for the death in the accident dated 24.07.2007 caused by the driver of the car bearing No. AP 9 X 4524 belongs to the 1st respondent insured with the 2nd respondent, after contest the Court below since granted Rs.2,60,000/- with interest at 7.5% p.a. fixing joint liability against the respondents, with the contentions in the grounds of appeal that the quantum of compensation is utterly low and the same may be granted as prayed for.

2. The claimants along with the unnumbered appeal filed a petition vide MACMAMP No.5223 of 2010 seeking to condone the delay of 124 days in preferring the appeal and on perusing the reasons assigned, the petition is allowed condoning the delay, directing the registry to number the appeal if it is otherwise in order and at request of both the counsel taken up the appeal for hearing.

3. Heard the learned counsel for the claimants and the 1st respondent-owner who remained exparte before the tribunal even impleaded in the appeal dismissed for default on 24.02.2015 not necessary party in the appeal from the submission of the counsel as per the expression of **M.Chakra Rao v. Y.Baburao**[1] and heard the learned counsel for the 2nd respondent-Insurer and perused the material on record.

4. The only dispute is the quantum. Among the three claimants, 3rd claimant cannot be a dependant on the deceased but for claimants 1 and 2, the parents of the deceased. Even as per the expression of the Apex Court in **Sarla Verma v. Delhi Transport Corporation**[2] as per paras-30-33, where the claimants are parents, personal expenses deduction is half. Since the accident was dated 24.07.2007, the tribunal taken the earnings of the deceased at Rs.15,000/- per annum as notional income but as per the guidelines in the expression of Apex Court in **Latha Wadhwa vs. State of Bihar**[3] Rs.3,000/- per month to be taken even no proof of income for any non-earning member and even for housewife as domestic contribution, if Rs.3,500/-p.m. including prospective earnings from the date of accident taken, half deducted, it comes to Rs.1750/-p.m.x12x15 (multiplier) taken from the age of the mother as per Sarla Verma supra, it comes to Rs.3,15,000/- apart from Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- loss of estate is awarded as per **Rajesh v. Rajbir Singh**[4]**,** it all comes to Rs.4,50,000/-. Hence, the claimants are entitled to Rs.4,50,000/- as compensation by enhanced from Rs.2,60,000/- with interest at 7.5% p.a.

5. In fact, the tribunal fixed joint liability even though there is evidence on record including from own document of the claimant covered by Ex.A.2 chargesheet and Ex.A.4 M.V.I. report which is also exhibited as Ex.B.2 by the insurer through his employee-R.W.1 clearly speak that the driver of the crime vehicle is not possessing driving license, even the chargesheet clearly speaks P.W.1 not possessing driving license, however, the tribunal brushed aside said evidence and no other evidence is produced by the claimant. When that evidence is relied on by the claimants which speaks in favour of the respondents as laid down by the Apex Court in **N.I.C.Vs. Rattani**[5]**,** that is sufficient proof unless it is explained away by the claimants. Having regard to the above, it is just and necessary to award to pay

compensation as awarded supra by the insurer to the claimants first and then recover from the owner of the crime vehicle as per the expressions of the Apex Court in ***National Insurance Company Limited Vs. Swaran Singh***[6]***, Oriental Insurance Company Limited Vs. Nanjappan & Others***[7] **Kusumlatha V. Satbir**[8] **and** also in later expression **S.Iyyappan Vs. United India Insurance Company**[9].

6. In the result, the appeal is partly allowed by enhancing the compensation from Rs.2,60,000/-to Rs.4,50,000/-(four lakhs fifty thousand rupees only) confirming the rate of interest at 7.5%. from date of the claim petition till realization/deposit with notice, by fixing the liability against respondents 1 and 2 being paid by the 2nd respondent-Insurer to the claimant first and then to recover from the 1st respondent-owner of the crime vehicle. The respondents shall deposit said amount within one month from today, failing which, the claimants can execute and recover. It is made clear that the insurer is entitled while depositing the amount payable, if not deposited or paid any amount so far to deposit, 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 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. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 19.11.2015
Vvr

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[1] 2001 (1) ALT 495 DB

[2] 2009 ACJ 1298

[3] (2001) 8 SCC 197=AIR 2001 (SC) 3218

[4] 2013 ACJ 1403=(4)ALT-35(SC).

[5] (2009) (2) SCC 775

[6] (2004) 3 SCC 297=2004-ACJ-1

[7] (2004) 13 SCC 224=2004-SAR(civil)-290

[8] AIR 2011 SC 1234 = 2011 (2) SCJ 639

[9] (2013) 7 SCC 62