HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. M.P.No.2654 OF 2011
IN/ AND
M.A.C.M.A. No.2905 OF 2015

JUDGMENT:

The claimants who are wife, two major sons of late Ramulu, maintained the claim under Section 163-A M.V Act for Rs.1,50,000/- compensation in M.V.O.P. No.771 of 2005 on the file of Motor Accidents Claims Tribunal-cum-I Additional District Judge, West Godavari District at Eluru (for short 'the Tribunal') against three respondents viz., driver, owner and insurer of Ambassador car bearing No.ADI 4584 and the Tribunal from the evidence on record of PWs.1 to 3, Exs.A1 to A4, RWs.1 and 2 and Exs.B1 and B2 and Ex.X1—authorisation letter, passed an award on 29.12.2008 while exonerating the 3rd respondent—insurer of the vehicle since the driver is not possessing valid driving licence as per Ex.A2 for LMV non-transport for this LMV transport vehicle, as per the evidence of RW.2 employee of the RTA, fixed liability only against the driver and owner of the vehicle supra for the claim as prayed for. It is impugning the exoneration of the insurer from liability, the present appeal is maintained with delay condonation of 701 days.

2) Heard learned counsel for appellants/ petitioners vis-à-vis learned standing counsel for insurance company and perused the material on record. Respondents 1 and 2—driver and owner of the vehicle remained exparte before the Tribunal and even impleaded and dismissed against owner of the ambassador car of respondent No.2 vide order dated 13.03.2015 that no way fatal to the maintainability of the appeal vide ***Meka Chakra Rao vs Yelubandi Babu Rao***[1] and the same is recorded.

3) The reasons assigned for the delay is lack of funds in

timely non-filing the appeal and the delay of 701 days in filing the appeal is thus condoned, subject to non-entitlement to interest on any enhancement of compensation. At request of both parties, the appeal is taken up for hearing directing the Registry to number the appeal.

4) The finding of the Tribunal while saying the Insurance policy is in force in exonerating the insurer is for the driver not possessing valid LMV transport licence. Once the policy covers the risk, the insurer cannot escape from the liability to indemnify but for at best to pay and recover more particularly from the expressions of the Apex Court in ***National Insurance Company Limited Vs. Swaran Singh & Others***[2] ***S.Iyyappan Vs. United India Insurance Company***[3] ***and Kusumlatha and others V. Satbir and Others***[4].

5) Coming to the quantum, the deceased was shown aged 55 years as per Ex.A3—Post Mortem report. The multiplier to be taken is '9'. If earnings of the deceased is to be taken at Rs.30,000/- per annum as per the expression of Apex Court in ***Kishan Gopal vs Lala***[5] it comes after 1/3rd deduction to Rs.20,000/- X 9 = Rs.1,80,000/- per annum. Apart from it Rs.5,000/- towards loss of consortium, Rs.2,500/- towards loss of estate, Rs.2,000/- towards funeral expenses, it comes to Rs.1,89,500/-, out of which on Rs.1,50,000/- with interest at 7.5% per annum interest from date of claim petition till the date of realization and on Rs.39,500/- at 7.5% per annum from today till realization and subject to insurer's liability of pay and recover from driver and owner of the vehicle.

6) Having regard to the above, the appeal is allowed modifying from the joint liability on the insurer to pay and recover from the owner and driver of the vehicle. The respondents shall deposit said amount within one month, failing which the claimant 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 in bank 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.

7) Consequently, miscellaneous petitions if any pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:28-12-2015
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[1] 2001 (1) ALT 495 DB

[2] (2004) 3 SCC 297=2004-ACJ-1

[3] 2013 (7) SCC 62

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

[5] 2014 (1) SCC 244