HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO
M.A.C.M.A.No. 3941 of 2012

JUDGMENT :

The claimants seven in number, who are no other than wife and children i.e., four major unmarried daughters and two major sons of the deceased G. Narsimulu aged about 57 years working as Police Constable just to retire within 11 months by attaining the age of superannuation, who died in the accident that occurred on 26.03.2006 while he was proceeding on his Luna Moped bearing No.AP 22D 5066 and at that time one motor cycle bearing No.AP 22K 2245 came from his back side in a rash and negligent manner and dashed his moped, as a result of which, he fell down and received injuries all over his body and while undergoing treatment at Apollo Hospital, Hyderabad, he succumbed to injuries, filed O.P.No.439 of 2006 on the file of the Motor Accident Claims Tribunal-cum-I Additional District Judge at Mahabubnagar claiming compensation of Rs.12,00,000/- under Section 166 of M.V. Act, 1988. The Tribunal awarded Rs.3,75,000/- with interest at 7.5% p.a. by fixing the liability against R.1 owner of the motor cycle by exonerating the insurer R.2. It is not only impugning the exoneration of the insurer but also the quantum of compensation, this appeal is filed.

2. Heard learned counsel for the claimants and learned counsel for the 2nd respondent.

3. The 1st respondent remained *ex parte* even before the Tribunal. So also herein failed to attend. Hence, taken as heard.

4. Perused the material on record.

5. It is one of the contentions raised by the counsel for the claimants that the Tribunal went wrong in exonerating the insurer even the policy covered by Ex.B.1 including

through the evidence of R.W.1, an employee of the insurer, undisputedly covered the risk and was in force. The exoneration by the Tribunal is on the ground that the owner R.1 entrusted the motor cycle to his younger brother, a minor, not completed 18 years without eligibility even to ride a gear vehicle, from a combined reading of Sections 3 and 4 of the M.V. Act, and without licence, which is nothing but deliberate, thereby the insurer is to be exonerated and placed reliance on the expressions in ***Oriental Insurance Company Limited Vs. Syed Ibrahim and others (2007 ACJ 2816 SC), Surina Durvasulu (died) by LRs Vs. Bhava Narayana Murthy and others (2008 ACJ 654), and Sardari and others Vs. Sushil Kumar and others (2008 (2) CCC 13 (SC)).*** All the three judgments are in relation to breach of terms and conditions of policy by owner in entrusting the vehicle to rider without driving licence or for not holding a valid driving licence including in one case for minor.

6. It is in referring to the provisions saying that it is the duty of the owner to take all precautions while allowing any person to ride his bike and while entrusting, to see that he must possess a valid driving licence. There is no dispute on the principle or proposition with reference to Sections 3, 4 and 134 of M.V. Act. However, the fact remains that once the policy covered the risk undisputedly issued by the insurer and was in force, so far as the identification of the claims of third party is concerned, the *inter se* breach between the owner and the insurer will not entitle the insurer to be exonerated from liability without indemnifying the owner but for at best to recover vide decisions in ***National Insurance Company Limited Vs. Swaran Singh & Others***[1]***, Kusumlatha and others V. Satbir and Others***[2] ***and S.Iyyappan Vs. United India Insurance Company***[3]***.*** Having regard to the above, the

Tribunal considered the one side of the coin and ignored its other side. From the duty of the insurer once the policy covered the risk but indemnify the insurer from the expressions supra, thereby the insurer has to be made liable to the extent of pay and recover but not to total exoneration.

7. Now, coming to the quantum of compensation, the claimants' contention is what the Tribunal awarded of Rs.3,75,000/- is utterly low to enhance. Whereas it is the contention of the insurer that what was awarded is excess and exorbitant, but for no cross objections to reduce.

8. Though it is the contention of the insurer that the personal expenses deduction is not $1/4^{th}$ but $1/3^{rd}$, as per ***Sarla Verma v Delhi Transport Corporation***[4] approved in ***Rajesh v. Ranbir Singh***[5] where the dependents are up to three and the deduction is $1/3^{rd}$ and more than three and up to 6, the deduction is $1/4^{th}$ and above 6, the deduction is $1/5^{th}$. Here, there are seven claimants. However, two claimants are major sons and only four claimants are shown as major unmarried daughters. Though it is the contention of the insurer that they are all married daughters, nothing could be elicited from the cross-examination of P.W.1 much less through the evidence of R.W.1 about any of them married much less by filing any voter identity cards or by calling for civil supplies family particulars cards or aadhar cards as the case may be the above evidence to appreciate for both sides not placed before the Court by suppression. However, when it could not be disputed by showing as to among them if any married what the Tribunal taken of $1/4^{th}$, no way requires interference as daughters even majors till marriage can be considered as dependents.

9. Coming to the earnings of the deceased,

undisputedly from Ex.A.8 and A.10 salary certificates and Ex.A.11 extract of service register of the deceased including from the evidence through P.Ws.2 and 3, the deceased would attain superannuation within 11 months and he left the service of hardly 10 to 11 months by the time of the accident. After that, what he could get is only a pension, thereby there is no loss. However, that is the criteria as otherwise the deceased could have been by doing some avocation or other and contribute something to the family. As per ***Latha Wadhwa vs. State of Bihar***[6] that even there is no proof of income and earnings, it can be reasonably estimated at Rs.3,000/- p.m. for any non-earning member. If applied to the date of accident five years later as per the above expression even taken Rs.3,600/- per month. If 1/4th is deducted therefrom, it comes to Rs.2,700/- p.m. and the loss dependency comes to Rs.2,91,600/- (Rs.2,700/- p.m. x 12 months x '9' multiplier as rightly taken by the Tribunal as per the age of the deceased between 56 and 60) + loss of consortium Rs.1,00,000/- + funeral expenses Rs.25,000/- + loss of estate Rs.10,000/- vide Rajesh case (5 supra) and the total compensation comes to Rs.4,26,600/- which is thereby to enhance from Rs.3,75,000/- that was awarded by the Tribunal.

10. Accordingly and in the result, the Appeal is partly allowed by enhancing the compensation from Rs.3,75,000/- to Rs.4,26,600/- while setting aside the liability of exoneration of the insurer by fixing the liability of the insurer to the extent of pay and recover from the 1st respondent. The respondents shall deposit the compensation amount within one month, 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 the balance 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.

Consequently, miscellaneous petitions, if any pending in this appeal shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

11th December, 2015
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No. 3941 of 2012

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

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

[3] (2013) 7 SCC 62

[4] 2009 ACJ 1298.

[5] 2013 ACJ 1403=(4)ALT-35(SC).

[6] (2001) 8 SCC 197=AIR 2001 (SC) 3218