HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.1537 OF 2012

IN/AND

MACMA No.2579 OF 2015

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ORDER:

This appeal is filed challenging the order dated 29.08.2011 in O.P.No.539 of 2008 on the file of Motor Accidents Claims Tribunal-cum-II Additional District & Sessions Judge(F.T.C.), Medak at Sangareddy.

2. MACMA.M.P.No.1537 of 2012 is filed under Section 5 of the Limitation Act, 1963 to condone the delay of (54) days in filing the appeal.

3. Heard and perused the material on record.

4. Though the 11th respondent, owner of auto bearing No.AP 23 V 2553 remained exparte before the tribunal and not necessary party to the appeal and of any impact on the maintainability of appeal vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma.**

5. It is at the request of both the parties, while allowing the delay condonation application and directing the Registry to number the appeal if other wise in order, taken up the appeal for final hearing.

6. The claim petition was filed by eight claimants under Section 166 of the Motor Vehicles Act for compensation of Rs.4 lakhs for the death of Mohd.Nisar, aged 25 years as per Ex.A5, Post Mortem report. The claimants 1 and 2 are parents and 3 to 8 are brothers and sisters of the deceased, even some of them are minors, they are no way dependants on the deceased but for on the parents. The accident was occurred on 19.05.2008. The earnings of the deceased taken by the tribunal at Rs.3,000/- p.m. and awarded compensation of Rs.4,00,000/- after deducting 1/3rd towards his personal expenses.

7. As per **Lata Wadhwa V State of Bihar,** Rs.3,000/- p.m. minimum to be taken and after the expression to the date of accident on 19.05.2008, with proportionate increase Rs.3,800/- p.m. taken and half is deducted towards personal expenses, it comes to Rs.1,900/-p.m. and contribution by the deceased to the claimants is Rs.3,42,000/- (Rs.1900/-x12x15(multiplier as per **Sarla Verma** (supra) from the age of the mother as 40 years), Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate as per **Rajesh and others Vs. Ranbir Singh and others,** total comes to Rs.3,77,000/- and what the Tribunal awarded is Rs.4,00,000/- with interest at 7.5% p.a.

8. Leave it as it is, the tribunal fixed the liability of the 1st respondent/owner of auto and 2nd respondent/insurer jointly. The 3rd respondent claimed as subsequent alienee by 1st respondent. The 4th respondent is the driver of auto. The insurer let in evidence not only with reference to Ex.A3, charge sheet and Ex.A6, Motor Vehicle Inspector's Report, but also placed reliance on other evidence let in showing there was no driving license that could be produced even issued notice and the crime was also registered for the offence under Section 180 of the Act against the driver for no valid license and that is also the evidence of RW.5 , Head Constable of Narayankhed Police Station, where the crime was registered and the accused was charged for the Motor Vehicles Act offence for not having valid driving license and the other evidence let in from among RWs.1 to 8 is of employee of R.T.A.office as RW.6 saying from verification of records there is no license in the name of driver.

9. Having regard to the same, it is proved that the driver is not having valid driving license. However, the tribunal brushed aside the same, without assigning valid reasons in fixing joint liability.

10. Though quantum arrived by the tribunal requires no interference and thereby not chosen to disturb the same, the awarding of joint liability against insurer requires to be modified into joint liability with pay and recover

11. Having regard to the above, the appeal is partly allowed by modifying the impugned order from joint liability to the liability of pay and recovery vide ***Insurance Company Limited Vs. Swaran Singh & Others,*** **S.Iyyappan Vs. United India Insurance Company** and **Kusum Lata ..vs. Satbir.**

12. Accordingly and in the result, while allowing the appeal in part with joint and several liability of the insurer and insured, to pay by the insurer to the claimants and then to recover from the insured. The insurer shall deposit 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** & **Nanjappan** (supra) that the insurer is entitled, while depositing the amounts payable, if not deposited or paid any amounts so far to deposit the balance amount, 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 of the respective claimants (but for to invest in a bank) till such attachment order is made. However, after the same, the Tribunal shall not withhold the amounts of the claimant, if there is any necessity to permit for any withdrawals but for to invest the respective balance amounts separately in fixed deposits in a nationalized bank. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

13. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:09-11-2015

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