HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.M.P.No. 2994 of 2011

in/and

M.A.C.M.A.No. 2781 of 2015

JUDGMENT :

The appellants/claimants are the parents of deceased Jyothimani spinster, aged about 25 years, who died in the accident dated 17.06.2007. The 1st respondent is owner and the 2nd respondent is insurer of lorry bearing registration No.AP 15W 1355. With the averments that when the claimants and the deceased daughter were proceeding to Peddapally on the auto bearing registration No.AP 15 6964 and when they reached near a Reliance Petrol bunk, the lorry bearing registration No.AP 15W 1355 coming in opposite direction dashed the auto, as a result of which, the auto turned turtle and the 1st claimant sustained injuries covered by another claim petition and his daughter Jyothimani was shifted to the Government Hospital, Karimnagar and while undergoing treatment, she succumbed to the injuries covered by Crime No.68 of 2007 of Traffic Police Station, Karimnagar, and that the deceased was earning Rs.6,000/- p.m. as a teacher in Trinity Model School, Peddapally, besides Rs.2,000/- more per month from tuitions and she was prosecuting her post graduation and also did courses in Hindi Pandit, PPTTC, PGDCA and DCA certification with bright future, the claimants filed O.P.No.516 of 2007 under Section 166 of the M.V.Act claiming for compensation of Rs.5,00,000/-. The Tribunal by award dated 25.11.2008 from the evidence of P.W.1, the 1st claimant, and another witness P.W.2 regarding avocation of the deceased with reference to Exs.A.1 to A.6 including salary certificate of the deceased dated 03.05.2008 showing that she was drawing salary of Rs.3,500/- p.m. as on the date of accident 17.06.2007 and evidence of R.Ws.1 and 2, Ex.B.1 copy of insurance policy and Ex.B.3 letter of the Deputy Transport Commissioner, Warangal, regarding the driving licence of the deceased, by exonerating the insurer from liability as the driver was not possessing valid driving licence, awarded compensation of Rs.2,72,800/- with interest at 7.5% p.a. only against the owner of the lorry. Impugning the same, the claimants maintained the appeal with a petition in M.A.C.M.A.M.P.No.2994 of 2011 seeking to condone the delay of 410 days in filing the appeal. The reason assigned for the delay is the financial problems.

2. Heard learned counsel for the 2nd respondent insurer and the counsel for the claimants. The 1st respondent, even served and proof of service filed, since failed to attend, be taken as heard and perused the material. The delay is condoned, subject to the condition of not entitling the claimants to interest on any enhanced compensation till date.

3. At the request of the counsel for the claimants and the 2nd respondent, the appeal is taken up for hearing and final disposal.

4. Heard and perused the record.

5. Though it is the claim as if the deceased was earning Rs.6,000/- p.m. as salary from the school and additional income of Rs.2,000/- p.m. from tuitions, while allegedly prosecuting her post graduation, no certificate was filed regarding her pursuing post graduation. Leaving about her other qualifications, but for Ex.A.6 salary certificate issued by the school also through the evidence of P.W.2 in proof of the fact that the deceased was drawing only Rs.3,500/- p.m. as on the date of the accident, the Tribunal therefrom arrived, by not even believing the same, at Rs.3,000/- p.m. as earnings of the

deceased as on the date of accident and awarded compensation as stated supra. In fact, the Tribunal also placed reliance in saying that the salary certificate is proved. Once that is the case, the deceased as a teacher was drawing Rs.3,500/- p.m. In addition to that, as per ***Sarla Verma v Delhi Transport Corporation***[1] **and** ***Rajesh v. Ranbir Singh***[2], the prospective earnings of the deceased being an employee also requires to be taken into consideration from her age. Accordingly, if taken 50% of the same, it comes to minimum Rs.5,000/- p.m. as on the date of accident. After deducting half of it as personal expenses, it comes to Rs.2,500/- p.m. The age of the claimants was shown in the course of evidence of P.W.1 as 55 years of 1st claimant and of his wife as more than 50 years. If the multiplier '13.5' for even the mother of the deceased taken between 49 to 51 is taken, it comes to Rs.4,05,000/- (Rs.2,500/- p.m. x 12 months x 13.5 multiplier) + loss of estate Rs.10,000/- + love and affection Rs.10,000/- + funeral expenses Rs.25,000/- ***vide Rajesh case (2 supra)***, the total of it comes to Rs.4,50,000/- which is the just compensation the claimants are entitled.

6. So far as the liability of the insurer is concerned, no doubt, as can be seen from the record with reference to Ex.B.3 letter issued by the Deputy Transport Commissioner and of evidence of R.W.2 employee of RTA, they have not issued the so-called driving licence No.16401/94 said to have been possessed by the driver of the crime lorry and Form 54 it mentions licence No.16401/WGRL/94, dated 19.03.2009, and there is no such licence from the particulars furnished by them and thereby the licence is untrue and fake. Even from that, as held by the Apex Court in ***United India Insurance Co.***

Ltd. V. Lehru*[3]** and the subsequent expressions in ***Oriental Insurance Company Limited Vs. Nanjappan & Others[4], ***National Insurance Company Limited Vs. Swaran Singh & Others***[5], ***Kusumlatha and others V. Satbir and Others*[6]** and ***S.Iyyappan Vs. United India Insurance Company,*[7]** even there is no valid driving licence or the licence is fake for nothing to show the owner deliberately and consciously allowed that fake licence, apart from the fact that once policy covered the risk to indemnify the 3rd party, the insurer is bound but for to pay and recover, the total exoneration of the insurer from liability by the Tribunal is unsustainable.

7. Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.2,72,800/- to Rs.4,50,000/- with liability of the 2nd respondent insurer to pay and recover from the 1st respondent and with interest at 7.5% p.a. on the enhanced compensation from today till realization. The respondents shall deposit the said 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 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 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

14th December, 2015
cbs

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[1] 2009 ACJ 1298.

[2] 2013 ACJ 1403=(4)ALT-35(SC).

[3] JT-2003(2) SC 595 = 2003 ACJ 611

[4] (2004) 13 SCC 224=2004-SAR(civil)-290

[5] (2004) 3 SCC 297=2004-ACJ-1

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

[7] (2013) 7 SCC 62