

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA No. 4769 of 2008

JUDGMENT :

Heard the learned counsel for the appellant, 3rd respondent to the claim petition in O.P. No.225 of 1988 and the appeal against respondent Nos.2 and 3, minors represented originally by late 1st respondent and there was a Court guardian appointed in I.A. No.1068 of 1992 dated 17.06.1993 before the trial Court and even shown in the cause title with same array, no application filed pending appeal for appointment of such Court guardian in the appeal lis though it is the duty of the insurer so to see, consequently dismissed for default against respondent Nos.2 and 3 who are the claimants and among respondent Nos.4 and 5, even 4th respondent driver not necessary party and owner remained exparte before the Tribunal when there are no appellants from the steps not taken, the appeal cause itself no way survives, leave about the compensation awarded itself is of a sum of Rs.43,200/- way back in the award of the Tribunal dated 02.11.1993 that too under the old law and even the same is governed by the expression of the Apex Court in *National Insurance Company V. Satpal Singh*¹, from the law qualified in *National*

¹ 2001(1) ACJ 1

*Insurance Company Limited VS Baljit Kaur*² saying what is laid down in *New India Assurance Company Limited V. Asha Rani*³ only in prospective in operation and such a benefit not available to the earlier expressions and decision made by the Tribunal but for to pay and recovery and this Court in the facts supra could not even choose to order pay and recovery.

2) In the result, the appeal is dismissed. There shall be no order as to costs. Pending miscellaneous petitions, if any, in both the appeals shall stand cancelled.

14.09.2016
ksh

Dr. B. SIVA SANKARA RAO, J



² (2004)2 SCC-1

³ 2002(8) Supreme 594