HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.Nos.57, 1261 of 2010 and 2371 of 2007 and CROSS OBJECTIONS (S.R.) No.35408 of 2010

COMMON JUDGMENT:

The three appeals are maintained by the 2nd respondent-insurer, among the two respondents including owner of the lorry bearing No.AP 31V 8090.

2. The manner of accident from the claim petition averments in the three claims almost same with reference to FIR and Charge sheet that the Hot Mix lorry of the 1st respondent supra with load of Hot Mix, while proceeding from Lankelapalem towards Akkayyapalem for the road laying work in progress, the driver by name M.Sreenu (examined as RW.3 and RW.2 in MVOP Nos.187 of 2006 and 1319 of 2005 respectively) entrusted the steering of the running vehicle to the cleaner by name Ganesh without driving license and due to the rash and negligent driving of the said cleaner, the lorry while hitting a tree at Jaggarao bridge was stopped in between knocked over the pedestrian by name G.Suryanarayana (whose wife, major sons and major married daughter are the claimants of O.P.No.187 of 2006 maintained under Section 166 of the Motor Vehicles Act (for short 'the Act') for a compensation of Rs.14,00,000/-); and also the

injured by name, Zameena Begum (claimant of O.P.No.1415 of 2005 maintained under Section 166 of the Act for a compensation of Rs.1,00,000/-, for the fracture of 2nd, 3rd and 4th metatarsal bones of left foot), while she was proceeding on a two wheeler bearing No.AP 31 AG 9631; and also dashed the stationed auto, one cyclist one pedestrian, some other vehicles and also the two wheeler of the injured and the cyclist Chinta Srinivas, aged 22 years as per Post Mortem Report was died and the claim maintained by the parents and younger brother of said deceased under Section 166 of the Act for Rs.4,00,000/- in O.P.No.1319 of 2005.

3. In the three claims, the 2nd respondent-insurer contested so also the 1st respondent-owner.

4. In the course of trial, Ch.Tirupathi Rao, Sub-Inspector of Police, IV Town Traffic Police Station, Visakhapatnam, who investigated the case based on F.I.R. in Crime No.50 of 2005 examined as RW.4 in O.P.No.187 of 2006 and as RW.5 in O.P.No.1319 of 2005 deposed that from the investigation it reveals in support of the claim petition averments supra of the driver entrusted running vehicle to the cleaner and due to the rash and negligent driving of the cleaner, the accident was occurred. Exs.A2/A3 is the M.V.I.Report respectively in the two cases. Ex.A4 is the charge sheet in the two cases.

5. On behalf of owner, M.Srinu, driver was examined as RW.3 in O.P.No.187 of 2006 and as RW.2 in O.P.No.1319 of 2005. It is the evidence of the said driver introduced in the course of trial, through the 1st respondent-owner of the lorry as if he was driving and not entrusted the vehicle to the cleaner. The tribunal did not properly appreciate the factum from the very evidence including the claim petition, F.I.R. and charge sheet showing driver entrusted the vehicle to the cleaner and same supported by claim petition averments. The Apex Court in National Insurance Company Ltd. v. Rattani and others[1] categorically held that when the claim petition averments based on the documents like F.I.R. and charge sheet show certain facts, the insurer need not prove further but to rely thereon. Having regard to the above proposition, no more proof is required from the insurer, as very claim petition averments, F.I.R. and charge sheet show the factum of driver entrusted the said vehicle to the cleaner. Apart from it, there is evidence of the insurer through investigator also and the investigating officer, who also filed charge sheet after investigation also deposed in support of the charge sheet placed reliance by the claimants on behalf of the insurer. Thereby, the tribunal gravely erred in saying the insurer could

[1] **(2009) 2 SCC 75**

not adduce any independent evidence and what are the averments in the charge sheet and the evidence could be rebutted by the owner of the vehicle through examination of the driver, the conclusion of the tribunal since wrong and unsustainable is liable to be set aside and it could be held in favour of the insurer and the appellants in the three appeals that the driver entrusted the vehicle to the cleaner with no driving license to the cleaner at the time of accident. However, it is not a case for total exoneration of the insurer, once policy covered the risk for third parties to indemnify but for a case of pay and recovery as referred by the tribunal, the expression of the Apex Court of Sohan Lal Passi v. V.P.Sesh Reddy (AIR 1996 SC 2627), leave about subsequent expressions in National Insurance Company Limited v. Swaran Singh[2] and S.Iyyappan v. United India Insurance Company[3].

6. Now coming to the quantum of compensation in the respective claims, so far as injured claimant in O.P.No.1415 of 2005 covered by MACMA No.2371 of 2007, for fracture of 2nd, 3rd and 4th metatarsal bones of left foot including medical expenses and treatment, what the tribunal awarded of Rs.45,000/- with interest at 7.5% p.a. no way requires

[2] (2004) 3 SCC 297=2004-ACJ-1
[3] (2013) 7 SCC 62

inference but for to say from the joint liability to the liability of pay and recovery.

7. So far as the claim in O.P.No.1319 of 2005 covered by MACMA No.57 of 2010 is concerned, the deceased-Chinta Srinivas was working as in-charge in courier office, Visakhpatnam and as on the date of accident i.e., 29.05.2005, he was earning Rs.3,000/- p.m. His age as per the Post Mortem Report is 22 years. The prospective earnings also required to be taken into consideration, thereby it is just to take at least Rs.3,400/- p.m. as on the date of accident. Among the three claimants, claimant Nos.1 and 3 are father and mother of the deceased respectively. The tribunal also considered the age of the mother, from which the multiplier 14 is applicable and out of Rs.3,400/- p.m., if half of the amount is deducted towards personal expenses of the deceased, it comes to Rs.1,700/-p.m and Rs.20,400/-p.a. and the same is multiplied by 14 it comes to Rs.2,85,600/-. Apart from it, Rs.35,000/- is awarded towards funeral expenses and loss of estate. Thus, Rs.3,20,600/- is the just compensation to reduce from Rs.4,00,000/- and from joint liability to pay and recovery.

8. Coming to O.P.No.187 of 2006 covered by MACMA No.1261 of 2010 and cross objections therein, the deceased-

G.Suryanarayana was shown as aged about 52 years. Among 4 claimants but for the wife, other are not dependents, thereby 1/3rd alone is to be deducted towards personal expenses. As per the evidence on record, the gross salary of the deceased as per Ex.X1 referred in para-18 of the award of the tribunal shows Rs.10,429/-. As per the contention of the cross objectors'/claimants that as the deceased was a permanent employee, the prospective earnings to be taken into consideration, as laid down in Rajesh Vs. Ranbir Singh[4].

9. Whereas, it is the submission of Sri K.Subba Rao, learned Standing Counsel for the insurer that as per Sarla Verma v. Delhi Transport Corporation[5], no prospective increase for a person aged above 50 years and the deceased in this case is 52 years above as per the Ex.X2-Date of birth of 01.07.1953 and the expression of Sarla Verma (supra) was quoted with approval in answering reference by a three judge Bench of the Apex court in HDFC Bank Ltd. v. Reshma[6], thereby no prospective increase can be taken into consideration and the expression of Rajesh (supra) even subsequent to Reshma (supra), did not refer Reshma (supra) to give any credence, in fact, he is a permanent employee, the period of superannuation is 60 years.

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[4] **2013 ACJ 1403**
[5] 2009 ACJ 1298
[6] (2015 ACJ 1 SC)

10. Having regard to the above and from the fact that the correctness of Rajesh (supra) is pending before the Larger Bench on reference by the Apex Court, this Court in the factual matrix feels it just to have 10% increase in the prospective increase, then it comes to Rs.11,472/-p.m. and if at least 15% is deducted towards income tax there from, it comes to Rs.9,750/- p.m. and if 1/3rd is deducted towards personal expenses of the deceased, it comes to Rs.6,500/- p.m. if the same is multiplied with multiplier '11' it comes to Rs.8,58,000/-(6500x12x11). Apart from the same, the claimants are entitled to Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate. Thus, in total, compensation comes to Rs.9,43,000/- and what the tribunal awarded of Rs.8,97,000/- is to be enhanced. However, from the joint liability to the liability of pay and recovery.

11. Accordingly and in the result, all the three appeals and the cross objections are partly allowed, as follows:

i) MACMA No.57 of 2010 is partly allowed by reducing the compensation from Rs.4,00,000/- to Rs.3,20,000/- and also from joint liability to the liability of pay and recovery;

ii) MACMA No.1261 of 2010 is partly allowed by enhancing the compensation from Rs.8,97,000/- to Rs.9,43,000/- and also from joint liability to the liability of pay and recovery;

iii) MACMA No.2371 of 2007 is partly allowed by confirming the quantum of compensation and from joint liability to the liability of pay and recovery; and

iv) Cross Objections (S.R.) No.35408 of 2010 is allowed by enhancing the compensation from Rs.8,97,000/-to Rs.9,43,000/-.

The pay and recovery directions are as follows:

The insurer shall deposit said amount within one month from the date of receipt of a copy of this order, failing which the claimant/s can execute and recover. It is made clear from the settled expressions of the Apex Court in United India Insurance Co. Ltd. V. Lehru[7] and *Oriental Insurance Company Limited Vs. Nanjappan & Others*[8] 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

[7] JT-2003(2) SC 595 = 2003 ACJ 611
[8] (2004) 13 SCC 224=2004-SAR(civil)-290

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 Motor Vehicles Act, 1988, and also ask the tribunal not to disburse the deposited amount of the respective claimant/s (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/s, 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 awards of the Tribunal holds good. There is no order as to costs.

12. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:14.12.2016
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