HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.1681 of 2005

AND

M.A.C.M.A. No.932 OF 2005

***COMMON JUDGMENT*:**

The claimants are six in number, who are no other than wife, four minor children and father of deceased by name Marapu Ramachandram, aged about 35 years as per Ex.A4—post mortem report, maintained the O.P. No.1849 of 2001 under Section 166 of M.V Act (for short 'the Act') for compensation of Rs.8,00,000/- against the owner and insurer of the auto bearing No.AP 23 T 9490, but the Tribunal awarded Rs.3,08,000/- with interest at 9% per annum vide award dated 15.10.2003, impugning the same, maintained the present appeal mainly disputing the quantum of compensation.

2) The averments in the claim are that on 13.04.2001 at about 9.00 am the deceased Marapu Ramachandram was traveling in an auto bearing No.AP 23 T 9490 along with goods from Kamareddy to go to his village. When the auto reached Mounica Wines, Sircilla Road, Kamareddy town at about 8.45 pm the driver of the auto drove the same in a rash and negligent manner, lost control over the auto, due to which the auto turned turtle, as a result he sustained multiple and grievous injuries and was later shifted to Government Hospital, Kamareddy. While he was undergoing treatment at about 9.30 pm on the same day i.e., one hour after the accident, he succumbed to injuries.

3) Heard learned counsel for the appellants and learned standing counsel for respondent No.2—insurer. Respondent No.1—owner of the auto remained *exparte* before the Tribunal hence taken as heard. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

4) It is the contention of the learned standing counsel for insurer

that the deceased was unauthorized passenger of the goods auto with no seating capacity and the claim of deceased as carpenter earning Rs.8,000/- per month is not true and the insurer cannot be made liable and the claim is unsustainable.

5) It is from the above contest, the Tribunal having formulated two issues of rash and negligent driving of auto driver and quantum of compensation entitled by the claimants against whom concerned, with reference to the evidence of PWs.1 and 2, RWs.1 and 2, Exs.A1 to A8, Ex.B1—policy held that the accident was the result of rash and negligent driving of the driver of the auto.

6) Coming to the liability of the insurer, it was held that as per the expression of the Apex Court in ***National Insurance Company Limited vs Baljit Kaur and others***[1] the insurer is liable to pay compensation to the petitioners and it can recover the same from the owner of the vehicle by initiating proceedings before the executing Court. The amount of compensation arrived at is Rs.5,50,660/- by taking the earnings of the deceased at Rs.3,000/- per month after deducting 1/3 towards personal expenses and adopted multiplier '14.81' from the age of the deceased about 35 years as per expression of this Court in ***Bhagwan Das vs Mohd. Arif***[2], in addition to it, loss of consortium and funeral expenses were awarded; with interest at 9% per annum from the date of petition till the date of realisation.

7) It is impugning said liability fixed against the insurer, the insurer maintained M.A.C.M.A. No.932 of 2005 questioning the liability and also the quantum of compensation as excessive. Whereas the claimants maintained M.A.C.M.A No.1681 of 2005 impugning the quantum as utterly low. The 1st respondent to M.A.C.M.A. No.1681 of 2005 is the 7th respondent to M.A.C.M.A No.932 of 2005, who is owner of the vehicle remained exparte even before the Tribunal.

8) Now coming to the issue as to whether the quantum of compensation awarded by the Tribunal is excessive or low and what is the

just compensation, the claimants placed reliance on Ex.A8—Income certificate of MRO, Machareddy, saying that the deceased was earning Rs.1,25,000/- per annum from agriculture and as a carpenter. However, there is nothing to show what are the lands he possessed and taken on its face value of the income from agriculture the deceased allegedly was getting when the lands are succeeded by the claimants, after his death what they loose is only income from his profession as carpenter besides supervision. There is nothing to show what are the earnings of deceased from carpentry work. As per the expression of the Apex Court in **Latha Wadhwa vs State of Bihar**[3] to take Rs.3,000/- per month in the absence of proof of earnings, the loss from carpentry work and agricultural supervision, if any, can be taken at Rs.3,000/- per month. Since the claimants are six in number, as per ***Sarla Verma vs Delhi Transport Corporation***[4], 1/4th to be deducted towards personal expenses and on adopting multiplier '16' from the age of the deceased, the loss of dependency comes to Rs.4,32,000/- (Rs.2,250/-X12 X 16). Apart from it, Rs.1,00,000/- towards loss of consortium to 1st claimant to the claim petition, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, Rs.10,000/- towards care and guidance to each minor children can be awarded as per the Three Judge Bench expression of the Apex Court in ***Rajesh vs Rajbir Singh***[5], in all it comes to Rs.6,07,000/- rounded off to Rs.6,00,000/-, which is the just compensation.

9) Coming to the liability of the insurer, from the award of the Tribunal fixed concerned, the Tribunal placed reliance on Bajljit Kaur (supra). In fact the principle laid down in Baljit Kaur is that where the decisions were rendered following ***New India Assurance Company Limited vs Satpal Singh***[6] by fixing joint liability on the insurer as the policy is in force. Even subsequently, the Three Judge Bench expression of the Apex Court in ***New India Assurance Company Limited vs Ashrani***[7] held that the insurer cannot be made liable unless the policy covers the risk for unauthorised passenger of a goods vehicle by virtue of

the wording of Section 147 of M.V Act, however where there are terms to pay based on Satpal Singh (supra) from Asharani (supra) is prospective in operation, in those cases where tribunals decided as per Satpal Singh (surpa), the insurer has to satisfy and recover thereafter.

10) Undisputedly, in the case on hand, the tribunal delivered judgment on 13.12.2004, which is long after the expression of the Asharani (supra) dated 03.12.2002. Once such is the case, the principle laid down in Baljit Kaur (supra) has no application to the facts, for no such finding by any decision of tribunal following Satpal Singh (supra) prior to the expression of Asharani (supra), with joint liability, as per the principle laid down in Baljit Kaur (supra), in such case to convert the joint liability into pay and recovery. Thus, the insurer cannot be made liable and the Tribunal went wrong in applying the proposition laid down in Baljit Kaur (supra) to the facts on hand. However, as per the expression of the Apex Court in ***United India Insurance Company Limited vs Laxmamma & others***[8], though the case under Section 64–VB of the Insurance Act, the principle laid down as to where the insured paid premium by way of cheque and dishonoured and after intimation not paid, the insurer is not liable to indemnify insured to claimant. However, it is held that out of amount deposited by insurer and the claimants are permitted to withdraw, to that extent, it cannot be recovered from claimants but for the insurer to recover from the owner (insured) of the vehicle.

11) Now coming to the facts on hand though a perusal of the docket order of M.A.C.M.A. No.932 of 2005 maintained in this Court shows as per M.A.C.M.A. M.P. No.1613 of 2005 there is an interim blanket stay. Subsequently from the vacate stay petition filed in M.A.C.M.A. M.P. No.7622 of 2012 there was a direction dated 29.11.2012 by this Court modifying the blanket stay dated 29.04.2005 into conditional stay subject to insurance company depositing half of the decretal amount together with costs within a period of six weeks from 29.11.2012 and while dismissing the vacate stay petition gave liberty to major petitioners to withdraw their respective share

amount without furnishing any security. Thus, pursuant to the award, whatever the amount withdrawn by the claimants, the insurer cannot recover from the claimants but for from the owner of the vehicle and whatever the amount lying in deposit and not permitted the claimants to withdraw, the insurer is, by virtue of this order, entitled to claim back the amount by filing check petition. Coming to rate of interest, as per expressions of the Apex Court in Rajesh (supra) and **T.N Transport vs Raja Priya**[9], the rate of interest at 7.5% per annum is reasonable.

12) In the result and accordingly:

i) M.A.C.M.A. No.1681 of 2005 is allowed in part while holding that the insurer cannot be made liable but for the owner of the auto i.e., 1st respondent while enhancing the compensation from Rs.5,56,000/- to Rs.6,00,000/- and by reducing the rate of interest from 9% per annum to 7.5% per annum. No order as to cots.

ii) M.A.C.M.A. No.932 of 2004 is allowed by setting aside the award of the Tribunal fixing joint liability on the insurer by exonerating the insurer for no liability. However, with the observation that pursuant to the interim order of this Court in M.A.C.M.A. M.P. No.7622 of 2012 dated 29.11.2012 out of the amount of 50% of the award of the Tribunal with costs, deposited by the insurer whatever the amounts permitted to be withdrawn in the order and permitted by the Tribunal pursuant thereto, the insurer cannot recover the same from the claimants, but for from the insured owner of the auto. So far as the rest of the amount lying in deposit to the credit of the O.P. before the Tribunal, the insurer is entitled to withdraw the same. No order as to costs.

13) Consequently, miscellaneous petitions, if any pending in the Appeals shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.24.06.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date:24.06.2016

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[1] 2004 ACJ 428

[2] 1987 ACJ 1052

[3] AIR 2001 SC 3218

[4] 2009 ACJ 1298

[5] 2013 ACJ 1403

[6] 2000 (1) SCC 227

[7] 2003 (2) SCC 223

[8] 2012 (5) SCC 234

[9] 2005 (6) SCC 236