HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Cross-Objections(SR) No.8217 of 2005
in /and
CMA No.3657 of 2004

JUDGMENT:

The 2nd respondent-Insurer among the two respondents including the owner of the jeep bearing No.AP20 T 7584, in O.P.No.742 of 2002 u/sec. 163-A of the Motor Vehicle Act(for short, 'the M.V.Act'), but later amended to Section 166 of the Act, on the file of the learned Chairman, Motor Accidents Claims Tribunal–cum-II Additional District Judge, Karimnagar, (*for short, 'Tribunal')* filed by the 5 claimants who are wife, two minor children and parents of the deceased Sri Madasu Srinivas, aged about 32 years as per the Ex.A.4 post mortem report, for a claim of Rs.4,00,000/- since granted Rs.2,86,000/- with interest at 9%p.a. with joint liability, vide award dated 26.02.2004 holding that the accident was the result of the rash and negligent driving of the driver of the crime vehicle, maintained the present appeal impugning the said award not only on the quantum but also on the ground of negligence of the deceased who sat on the top of the jeep allowed by the owner and the driver and the accident was thereby outcome of the negligence of the deceased apart from that allowing a passenger to sat on the top of the jeep is violation of the permit conditions which are also part of the conditions of the policy to exonerate the Insurer and thereby sought for exoneration of the Insurer and also compensation as excessive.

2. In the Cross-Objections by the claimants sought for allowing the claim as prayed for Rs.4,00,000/- saying what was awarded of Rs.2,86,000/- is utterly low and unjust.

3. Heard the arguments of the learned counsel for the Cross-objectors-claimants vis-a-vis the learned counsel for the Insurer from the

dismissal of the claim petition against the owner of the vehicle who since remained exparte before the tribunal though impleaded not turned up no way fatal to the maintainability of the appeal as per the expression in **Meka Chakrarao v. Yelubandi Baburao**[1]

4. Though the appeal against Respondent No.4, father of the deceased of the appeal, is shown as if dismissed for default, there is vakalath of the advocate maintained cross-objections for R.4, also advocate in the appeal and thereby the order of the Court is rectified by setting aside dismissal order mistaken outcome vide dated 08.02.2016.

5. Heard and perused the material on record.

6. There is no dispute on the fact of the deceased was travelling by sitting on the top of the jeep. There is no permit to allow any passenger to travel by sitting on the top of the jeep and it is nothing but violation of the permit and as one of the conditions of the violation of the policy, from the settled proposition of law in three judge Bench expression of the Apex Court in *National Insurance Company Limited Vs. Swaran Singh*[2]*,* it is held no doubt in that case for driver not possessing valid driving licence as one of the conditions of the policy violations, the Insurer is liable to pay first and then recover from the owner of the vehicle and not liable for total exoneration from identifying the 3rd party claims once there is a policy covering risk. Thus, what the tribunal awarded of joint liability is required to be modified as liability of pay and recovery to safeguard the interest of the Insurer to proceed against the owner.

7. With regard to the quantum of compensation whether excessive or utterly low and also the rate of interest from the appeal and Cross-Objections with respective rival contentions is concerned, the

---

[1] 2001 (1) ALT 495 DB
[2] (2004) 3 SCC 297=2004-ACJ-1

accident was dated 01.03.2001. The deceased was working as driver in NTPC as per the evidence of P.W.3 and Ex.A.6 salary certificate and to the proof of he was having valid driving licence Ex.A.8 is marked. Though the factum of deceased is a driver is proved from the evidence, from the salary certificate, it is claimed in the claim petition that the deceased was earning Rs.4,000/- per month, however, the salary certificate shows Rs.3,500/- p.m. In the cross-examination, he stated that no register was maintained for payment of the salaries of the employees in NTPC. There is no salary certificate admittedly submitted by the Labour Department and tribunal thereby not taken the same into consideration and estimated the earnings of the deceased at Rs.3,000/- p.m. which is reasonable as per the guideline in the expression of Apex Court in **Latha Wadhwa vs. State of Bihar**[3] that even there is no proof of income and earnings, it can be reasonably estimated at Rs.3,000/- p.m. for any non-earning member and even for housewife as domestic contribution. Now the same is taken, as the accident is in the same year of the expression supra with months gap, with prospective earnings of 50% which comes to Rs.4,500/- p.m. that can be estimated as per the *Sarla Verma v. Delhi Transport Corporation*[4]. There are 5 claimants in all and all the dependents and as per **Sarla verma** supra, 1/4th to be deducted towards personal expenses. Since the deceased sat on the top of the jeep and sustained head injury clearly shows there is 50% negligence on his part. If such is the case, the claimants are entitled to 50% compensation only. No doubt u/sec. 166 of the M.V.Act, the tribunal proceeded though amended from Sect.163-A of the Act, with a finding of the accident was the result of the rash and negligent driving by ignoring however, the negligence of the deceased even the facts on

---

3 (2001) 8 SCC 197=AIR 2001 (SC) 3218
4 (2009) 6 SCC 121(2JB)=2009-ACJ-1298

its face from the very pleadings including FIR and chargesheet it clearly shows the deceased also contributed to the accident by sitting on the top of the jeep. If he did not sit, he could not have met with the accident. If such is the case, Rs.4,500/-p.m.x3/4 x 12 x 16 (multiplier from the age of the deceased 32 yrs) =Rs.6,48,000/- besides that a minimum of Rs.50,000/- towards loss of consortium + Rs.25,000/- towards funeral expenses + Rs.10,000/- towards loss of estate + Rs.20,000/- towards care and guidance to the two minors added, it comes to Rs.7,53,000/-, out of it, the 50% is deducted towards the negligence of the deceased, it comes to=Rs.3,76,500/- rounded to Rs.3,77,000/- is the just compensation for which the claimants are entitled, however by reducing the rate of interest from 9% to 7.5% p.a.

8. Accordingly and in the result, both the appeal and Cross-Objections are allowed partly by enhancing the compensation from Rs.2,86,000/- to Rs.3,77,000/- however, by reducing the rate of interest from 9% p.a. to 7.5% p.a. which the 2nd respondent-Insurer to pay first and then to recover from the 1st respondent-owner of the crime vehicle. The respondents shall deposit said amount within one month from today, 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 and 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 claimant (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. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:09.08.2016
Vvr