HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. M.P. No.6455 OF 2012

IN/ AND

M.A.C.M.A. No.723 OF 2016

JUDGMENT:

The two claimants are sons of the deceased by name Lingamma, aged 58 years, maintained the claim against respondents i.e., owner and insurer of auto bearing No.AP 24 U 3775 for the alleged rash and negligent driving of the driver of the Auto, by its driver, while the deceased was traveling as a passenger in the auto resulted the same turned turtle and from the injuries she sustained injuries, she was succumbed while undertaking treatment in the Government Hospital, Nalgonda on 26.06.2005 and the police, Nalgonda registered the Crime No.82 of 2005. The Tribunal allowed the claim in part while granting compensation of Rs.1,05,000/- with interest at 9% per annum out of the claim made under Section 163-A and 166 of M.V. Act for Rs.1,30,000/-, however by exonerating the insurance company on the ground of the auto is overloading with 1+5 instead of 1+3. It is impugning the same, present appeal is filed by the claimants.

2) Respondent No.1—owner of the vehicle remained exparte before the Tribunal even impleaded in the appeal and dismissed for default, it is no way fatal to the maintainability of the appeal ***Meka Charadhara Rao vs Yelubandi Babu Rao***[1] and the same is recorded.

3) By order of this Court dated 15.10.2012 the delay of 2113 days in filing the appeal is condoned subject to condition of payment of costs, however, since compliance made by the appellants on 05.11.2012 by paying costs of Rs.2113/- and the same is recorded. Registry is directed to number the appeal if otherwise in order. Perused the material on recorded.

4) Learned counsel for appellants submits that this is the only claim for death and there is nothing to show overloading contributed to the accident and in the absence of which the finding of the Tribunal in dismissing the claim against respondent No.2—insurer is unsustainable and the insured is liable to be indemnified by the insurer undisputedly as

the policy covers the risk.

5) Whereas it is the contention of the learned standing counsel for the insurer that the Tribunal when rightly exonerated the Insurer from liability for this Court while sitting in appeal, there is nothing to interfere and therefrom sought for dismissal of the appeal.

6) Heard learned counsel for appellants and learned standing counsel for 2nd respondent—insurer.

7) From the above, once there is no other claim even to invoke the principle laid down by the expression of the Apex Court in ***National Insurance Company Limited vs Anjana Shyam***[2] and for nothing to show overloading contributed to the accident, the Tribunal could have been fixed liability on insurer also for policy covered the risk. Coming to the quantum of compensation, the claimants are major sons of deceased and not dependents but for to consider what the deceased could contribute to them out of his earnings and for that the multiplier applicable is '9', from the age of the deceased 58 years and as per ***Sarla Verma vs Delhi Transport Corporation***[3] and after half deduction towards personal expenses out of his earnings taken at Rs.3,500/- per month, it comes to Rs.1,750/- per month and even taken half of amount as contribution to the claimants, it comes to Rs.94,500/- (Rs.875/- X 12 X 9). Apart from it, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate awarded as per the expression of the Apex Court in ***Rajesh vs Rajbir Singh***[4], in all it comes to Rs.1,29,500/- rounded to Rs.1,30,000/- to which the claimants are entitled to.

8) So far as the rate of interest is concerned, the claimants are entitled to interest at 7.5% per annum from the settled proposition of law in ***TN Transport Corporation v. Raja Priya***[5], Sarla Verma supra and from the latest expression of the Apex Court in Rajesh supra.

9) Accordingly and in the result the appeal is allowed by enhancing the compensation from Rs.1,05,000/- (Rupees one lakh five thousand only) to Rs.1,30,000/- (Rupees one lakh thirty thousand only) as claimed, however, the enhanced amount shall carry interest at 7.5% per annum from dated 05.11.2012 till realization. No order as to costs.

10) Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.29.01.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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M.A.C.M.A. M.P. No.6455 OF 2012
IN/ AND
M.A.C.M.A. (SR) No.40888 OF 2010

Date:29.01.2016

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[1] 2001 (1) ALT 495 DB

[2] 2007 ACJ 2129

[3] 2009 ACJ 1298

[4] 2013 ACJ 1403

[5] (2005) 6 SCC 236