THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.2652 of 2011
IN/AND
MACMA No.182 OF 2016

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JUDGMENT:

Heard. The delay is condoned. The appeal is taken up for hearing.

02. Heard the learned counsel for the claimants/respondents and the learned counsel for the appellants/ insurer. Respondent No.5/ owner of the vehicle remained exparte before the Tribunal and even impleaded in the appeal and notice ordered earlier unserved and later fresh notice taken by restoration of the dismissal order the same also returned taken as sufficient service.

03. Perused the material on record. The age of the deceased about 24 years and unmarried. The first claimant is the mother, claimants 2 to 4 not dependants on the deceased, but for on the mother. From the age of the mother, more than 40 years, as per **Sarla Verma and Others v. Delhi Transport Corporation and others**[1]**,** the multiplier applicable is 14.5 and what the tribunal taken up requires to reduce. The earnings of the deceased claimed under Ex.A.6 - salary certificate is above Rs.5,500/- per month from the evidence of P.W.1, same is held by the Tribunal not proved. As per the expression of the Apex Court in **Latha Wadhwa v. State of Bihar**[2] in the absence of proof of earnings minimum income at Rs.3,000/- can be taken and from the date of accident i.e. 15.08.2008 with proportionate increase even taken the earnings of the deceased at Rs.3,700/-, therefrom if half of the earnings to be deducted towards personal expenses, it comes to Rs.1850 x 12 x 14.5 = 3,21,900/-, apart from the loss of earnings, the claimants are entitled for an amount of Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate, in all the claimants entitled for an amount of Rs.3,56,900/-. Hence, what the Tribunal awarded Rs.3,64,000/- practically requires no

interference so also rate of interest.

04. No doubt, the Tribunal found that the vehicle is LMV non transport, whereas the driving licence from the evidence of R.Ws.1 and 2 with reference to Exs.B.2 and A.5 is only LMV non transport and once such is the case though the Tribunal having held in paragraph 22 the case of pay and recovery, the same not reflected in the operative portion of the judgment and decree and the law is fairly settled vide expressions of the Apex Court in ***National Insurance Company Limited Vs. Swaran Singh & Others[3], Kusumlatha and others V. Satbir and Others[4] and S.Iyyappan Vs. United India Insurance Company[5].*** Thus it is the case of pay and recovery.

05. Accordingly and in the result, the appeal is partly allowed while confirming the compensation and rate of interest and by clarifying the observation of the Tribunal of pay and recovery not reflected in the judgment and decree with the following pay and recovery. The respondents shall deposit the compensation awarded by the Tribunal within one month, 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 the balance 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 the claimants (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. There is no order as to costs.

06. Consequently, miscellaneous petitions, if any, pending in this

appeal shall stand closed.

Dr.B.SIVA SANKARA RAO, J

Dt.27.01.2016

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THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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MACMA MP No.2652 of 2011
IN/AND
MACMA (SR) No.25455 OF 2011

27.01.2016

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[1] 2009(6) SCC 121

[2] AIR 2001 (SC) 3218

[3] (2004) 3 SCC 297=2004-ACJ-1

[4] AIR 2011 SC 1234 = 2011 (2) SCJ 639

[5] (2013) 7 SCC 62