HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

*M.A.C.M.A Nos.124 OF 2006 and 3654 OF 2005*

*COMMON JUDGMENT*:

Out of the same accident dated 15.01.2000, the two claim petitions were filed, one is for the death of their son by name Ranjit Kumar in O.P. No.258 of 2000, and respective injured maintained O.P. Nos.683 of 2000 and 684 of 2000 on the file of Motor Accidents Claims Tribunal (II Additional District Judge) Mahabubnagar (for short 'the Tribunal') under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') against the owner and insurer of the jeep bearing No.AHH 2429 alleging that when the deceased and injured persons were proceeding on their bicycles, the jeep of 1st respondent insured with 2nd respondent, while coming in opposite direction at high speed and in a rash and negligent manner, dashed against the deceased and two others, as a result, the Ranjit Kumar, aged about 18 years, was succumbed to injuries and the other two injured were sustained injuries. The Tribunal having clubbed all the three claim petitions i.e., O.P. Nos.258, 683 and 684 of 2000 conducted trial and found from the evidence of PW.1—father of the deceased in O.P. No.258 of 2000 and the other two injured including PW.2—petitioner in O.P. No.684 of 2000 apart from PW.3—petitioner in O.P. No.683 of 2000, came to the conclusion, with reference to Exs.A1 to A5 viz., FIR, Inquest Panchanama, Post Mortem report, MVI report and charge sheet, that the accident occurred due to rash and negligent driving of the jeep of 1st respondent and disposed of the three claim petitions vide common order dated 14.09.2005. Aggrieved by the same, the appellants maintained the present appeals.

2) Heard learned counsel for the appellants—claimants and learned standing counsel for 2nd respondent—insurer. Though notice served on 1st respondent—owner failed to attend, hence taken as heard. Perused the material on record.

3) The Tribunal having so found in dealing with Ex.B2—copy of driving license of the driver and the claim made that the respective claimants in O.P. No.258 of 2000 for the claim of Rs.2,00,000/- and in O.P. No.684 of 2000 for the claim of Rs.1,00,000/- under Section 166 of M.V Act and the medical certificate of PW.2 in O.P. No.684 of 2000, which shows that the claimant sustained one fracture, thereby awarded a sum of Rs.19,000/- with interest at 7.5% per annum and a sum of Rs.1,00,000/- for the death of Ranjit Kumar in O.P. No.258 of 2000, with interest at 7.5% per annum with joint liability respectively.

4) However, having observed at para No.7 of the common award of the Tribunal, from the evidence of RW.1—employee of the insurer with reference to Ex.B2—driving licence, the driver did not possess valid driving license holding a non-transport license and even it is left to the insurer to proceed against the owner to recover after payment, however that is not reflected in the order; having so observed that the finding without even filing an appeal,

the injured is entitled to challenge is the submission, do not entitle to higher relief than what was awarded by the Tribunal without filing cross objections or independent appeal of the insurer to dispute the total non-liability.

5) From the above, it is subject to pay and recovery, if any to be ordered from the settled expressions of the Apex Court in National Insurance Company Limited Vs. Swaran Singh & Others[1] S.Iyyappan Vs. United India Insurance Company[2] Kusumlatha and others V. Satbir and Others[3].

6) Coming to the quantum of compensation, taking into consideration the fact that the accident is of January, 2000 and Ex.P8—Certified copy of Medical Certificate of PW.2 issued by Government Hospital, the compensation of Rs.19,000/- awarded in O.P. No.684 of 2000 is enhanced to Rs.25,000/- including pain and sufferance, medical expenses, attendant and transport charges, subject to pay and recover by the insurer from the owner; In O.P. No.258 of 2000 the alleged income of the deceased, claimed at Rs.2,000/- per month even taken the same, as the claimants are parents and deceased was bachelor, half to be deducted towards personal expenses of the deceased and the multiplier applicable is '14' from the age of the mother, the loss of dependency comes to Rs.1,68,000/- (Rs.1,000/- X 12 X 14). Apart from it, as per the expressions of the Apex Court in Rajesh vs Rajbir Singh[4], the

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[1] (2004) 3 SCC 297=2004-ACJ-1
[2] (2013) 7 SCC 62
[3] AIR 2011 SC 1234 = 2011 (2) SCJ 639
[4] 2013 ACJ 1403 SC

claimants are entitled to Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate. In all it comes to Rs.2,03,000/- rounded to Rs.2,00,000/- as prayed for.

7) Accordingly and in the result,

a) M.A.C.M.A. No.124 of 2006 is partly allowed while enhancing the compensation from Rs.1,00,000/- to Rs.2,00,000/- with interest at 7.5% per annum from the date of petition till realisation.

b) M.A.C.M.A. No.3654 of 2005 is partly allowed while enhancing the compensation from Rs.19,000/- to Rs.25,000/- with interest at 7.5% per annum from the date of petition till realisation.

c) However, converting the joint liability of the insurer and insured (respondents 1 and 2 to the claim petition) into pay and recovery with the following terms and conditions:

The Insurer—2nd respondent to the claim petitions shall deposit the said amount within one month, failing which the claimants can execute and recover. It is made clear from the settled expressions of the Apex Court in *United India Insurance Company Limited vs Lehru*[5] and *Oriental Insurance Company Limited vs Nanjappan & others*[6] that the insurer is entitled, while

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[5] 2003 ACJ 611
[6] (2004) 13 SCC 224 = 2004 SAR (Civil) 290

depositing the amount payable, if not deposited or paid any amount so far to deposit in bank 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.

8) Consequently, Miscellaneous petitions, if any pending in these appeals, shall stand closed.

**Dr. B. SIVA SANKARA RAO, J**

Dt.04.08.2016
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