

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA MP No.2757 OF 2011

IN/AND

MACMA No.1146 OF 2016

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JUDGMENT:

_____ This appeal is maintained by the claimants against the award dated 03.12.2010 in M.V.O.P. No.311 of 2008 on the file of the Chairman, Motor Accidents Claims Tribunal – cum- V Additional District Judge, Rayachoti, with the delay of 132 days.

_____ 02. Heard learned counsel for the appellants/ claimants. Delay is condoned subject to condition of not entitled to interest on the enhanced amount, if any, but from today and the appeal is taken up for hearing.

_____ 03. The first respondent to the claim petition remained exparte before the Tribunal, impleaded in the appeal dismissed for default on 13.03.2015, no way fatal to the appeal vide expression of this Court reported in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**

And others ^[1] _____

_____ 04. The claim petition was filed by the wife and minor children of the deceased, Ramanjulu Reddy, who died in the motor vehicle accident that occurred on 25.12.2006, seeking compensation of Rs.5,00,000/- for the death of the said Ramajulu Reddy in the said accident. The learned Chairman, after hearing both sides and after perusing the material on record, held that the accident occurred due to the negligent driving of the first respondent and awarded compensation Rs.3,71,000/- against R.1 with interest at 7.5% per annum from the date of petition till realization

_____ 05. The appeal filed mainly impugning the exoneration of the insurer and also disputing the quantum.

_____ 06. It is the claim of the counsel for the appellants/ claimants that the Tribunal went wrong in not considering the deceased engaged lorry for shifting tomato load and unload, after unloading one load of tomato, he was taking back the lorry, at that time the accident was occurred, also

saying the quantum awarded is too low, enhancement prayed for.

07. Whereas it is the contention for the insurer that the Tribunal is right in exonerating the insurer for policy not covered unauthorized passenger of the goods vehicle with any contractual obligation even under Section 147 of the Act and even from the claim petition, it is the claim that at the time of traveling there is no load, even to claim as owner or representative of goods and the compensation as awarded is not low and there is nothing to enhance. Hence to dismiss.

08. Perused the material on record.

09. So far as the quantum of compensation is concerned, the age of the deceased as on the date of accident was 45 years as per the Post Mortem Examination Report. Under Section 166 of the Act, for a person aged 45 years, the multiplier is '14', from '46' it is '13'. Hence, taken the multiplier '13.5' and the multiplier '15' taken by the Tribunal is not correct.

10. Now coming to the earnings, the Tribunal considered the monthly earnings of the deceased at Rs.3,000/-. In fact, it is the contention of the claimants that the deceased was earning Rs.5,000/- per month. No doubt, there is no proof. As per the expression of the Apex court in **Latha Wadhwa v. State of Bihar**^[2], in the absence of proof of earnings, minimum earnings Rs.3,000/- to be taken into consideration and after the expression, by the date of accident in the year 2006, it is more than 4 years elapsed, thereby even taken the earnings with proportionate increase Rs.3,400/- per month. Out of the earnings, if 1/3rd to be deducted towards personal earnings of the deceased, thereby the monthly contribution towards his family members comes to Rs.2,267/-, multiplied the same with the multiplier 13.5, the loss of earnings arrived at Rs.3,67,254/- (2,267/-x12x13.5). Apart from the loss of earnings, the claimants are entitled for an amount of Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate vide expression of the Apex Court in **Rajesh v.**

Rajbir Singh^[3], the compensation entitled by the claimants arrived at Rs.5,02,254/-, but the claimants restricted their claim to Rs.5,00,000/-, hence they are entitled for the same, however, not entitled to interest on the enhanced interest from today.

11. Coming to the liability of the insurer, no record filed either trip sheet or any proof regarding engagement much less owner of the vehicle even examined, if at all there is any truth in proof of the claim, there is nothing to show the deceased was traveling with the goods even to claim as representative of the goods much less as owner. There is nothing to show any tomato crop raised in his land much less trader in tomato by any registration certificate. Undisputedly, from the very claim, at the time of traveling, there is no tomato load. Even to claim as representative of goods, after unloading, he has no right to travel, thereby but for unauthorized passengers. Once such is the case, there is no question of covering the risk under the policy, under Section 147 of the Act or otherwise, in the absence of any special contract which is lacking and the law is fairly settled from the expression of the Apex Court in **Sanjeev Kumar Samrat v. National Insurance Company Limited and others**^[4]

and in **National Insurance Company Limited V. Prem Bhai Patel**^[5]. Having regard to the above, the Tribunal is right so far exoneration of the insurer is concerned.

12. Accordingly, the MACMA MP No.2757 of 2011 is allowed and the appeal is partly allowed while upholding the exoneration of the insurer by the Tribunal, the compensation enhanced to Rs.5,00,000/- (Rupees five lakhs only) with interest, on the enhanced amount of Rs.1,29,000/- only from today. No costs.

13. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

10.02.2016

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[\[1\]](#) 2002 ACJ 828

[\[2\]](#) AIR 2001 SC 3218

[\[3\]](#) 2013 ACJ 1403

[\[4\]](#) 2013 (1) KLT 41 - SC

[\[5\]](#) (2005)6 SCC 172