HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.684 OF 2010

JUDGMENT:

The claimants maintained M.V.O.P. No.403 of 2007 on the file of Motor Accidents Claims Tribunal–cum–III Additional District Judge, Tirupati (for short 'the Tribunal') under Section 166 of Motor Vehicles Act, 1988 (for short 'M.V.Act') for a compensation of Rs.5,75,000/- against owner and insurer of tanker lorry bearing No.TN 32 V 1999 on account of death of T.Munikrishna, aged about 29 years as per Ex.A3—post mortem report. From the contest of 2nd respondent—insurer, the Tribunal granted compensation of Rs.3,06,792/- with interest at 7.5% per annum fixing joint liability against respondents 1 and 2. T.Munikrishna is no other than husband of 1st claimant and father of claimants 2 and 3 and son of claimants 4 & 5 since 4th claimant died. Impugning the quantum of compensation as utterly low, the claimants maintained the present appeal.

2) Heard learned counsel for the claimants and learned standing counsel for the insurer. Perused the material on record.

3) A perusal of the record shows that the deceased was working as cleaner of tanker lorry bearing No.TN 32 V 1999 under 1st respondent—owner insured with 2nd respondent. The Accident occurred due to rash and negligent application of sudden brakes by its driver, the deceased fell down from the cabin of the lorry and without noticing the same the driver of the tanker lorry ran over him, which resulted his instantaneous death. The deceased being the cleaner of the vehicle, there is no coverage of policy. It is not a case of representing the owner as attender of the goods to say Act policy otherwise covers the risk under Section 147 (1) of the Act as the very claim is he was travelling as cleaner. Once such is the case from

perusal of Ex.B1—policy, there is no coverage of risk for the cleaner by any additional premium.

4) Once such is the case, the deceased was unauthorised passenger of the goods carriage as also laid down by the two latest expressions of the Apex Court in ***National Insurance Company Limited vs Saju P.Paul***[1]***, Sanjeev Kumar Samrat vs NIC***[2] that unless policy covers the risk, the insurer cannot be made liable to indemnify the owner. However, the fact remains as discussed supra, proved from the evidence of PWs.1 and 2 and Exs.A1 to A3, the deceased was not died due to fall as unauthorized passenger but after fall from the tanker lorry he became a third party and in that capacity was run over under the wheels of the tanker lorry from the rash and negligent driving by application of sudden brakes and to that extent he is entitled to maintain the claim. However, but for his travelling as unauthorised passenger in the vehicle he could not fell down and but for that he could not be run over though death was not in that capacity of unauthorized passenger but as third party. Thereby, 50% contribution on the part of the owner and insurer and 50% contribution on the part of the deceased is just to fix.

5) From this now coming to the quantum of compensation, the deceased was earning Rs.3,600/- per month as cleaner. The accident was dated 12.02.2007. In the absence of proof of earnings, as per ***Latha Wadhwa vs State of Bihar***[3] minimum Rs.3,000/- per month can be taken, as the accident occurred nearly six years after the expression with proportionate increase Rs.3,600/- per month to be taken as earnings of the deceased; as the claimants are four in number and all are dependents on the deceased, 1/4th to be deducted towards

[1] 2013 ACJ 554
[2] 2014 (14) SCC 243
[3] AIR 2001 SC 3218

personal expenses as per ***Sarla Verma vs Delhi Transport Corporation***[4], it comes to Rs.2,700/-, the multiplier applicable is '17' from the age of the deceased thereby, the loss of dependency comes to Rs.5,50,800/- (Rs.2,700/- X 12 X 17). Apart from it, the claimants are entitled to 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 for the two minor children, in all it comes to Rs.6,55,800/- 50% therein comes to Rs.3,27,900/-, rounded to Rs.3,28,000/- is thus the just compensation.

6) Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.3,06,792/- (Rupees three lakhs six thousand seven hundred ninety two only) to Rs.3,28,000/- (Rupees three lakhs twenty eight thousand only) with interest at 7.5% per annum. In other respects the award of the Tribunal holds good. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.23.12.2016
knl

[4] 2009 ACJ 1298