HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.567 OF 2005

JUDGMENT:

The claimants, no other than the wife, two minor children and mother of deceased Y.Sudhakar aged more than 35 years as per the Ex.A.2 inquest report for the accidental death dated 11.11.2003, maintained the claim u/s.166 of the Motor Vehicle Act,1988 *(for short, 'the Act')*, in O.P.No.12 of 2004 on the file of the learned Chairman, Motor Accidents Claims Tribunal–cum-Principal District Judge, Kurnool, district, (*for short, 'Tribunal')*, for compensation of Rs.4,00,000/- (Rupees four lakhs only) against the owner and insurer of the tractor and trailer bearing Nos. AP-21-T 1183 and 1184 and after contest by respondents, more particularly by the Insurer, of non-liability with reference to the counter and evidence of their employee-R.W.1 and R.T.A. employee R.W.2 of there is no valid driving licnece to the driver of the crime vehicle as on the date of accident for the same was expired for non-renewal and thereby liable for violation of the terms of the policy, for no driving licence to the driver that is repealed, the tribunal held liability to the extent of pay and recovery against the Insurer while awarding compensation of Rs.1,93,000/- with interest at 9%p.a. by award dated 06.01.2005, preferred the appeal impugning the quantum awarded by the tribunal as utterly low in saying tribunal ought to have taken consideration of the earnings of the deceased at Rs.3,500/- per month instead of Rs.15,000/- per annum.

2. Heard and perused the material on record.

3. Though several contentions raised by learned counsel for the Insurer, there are no cross-objections undisputedly but for to say anything on the rate of interest as excessive to interfere, no further relief against the relief awarded by the tribunal can be granted in favour of the Insurer. Apart from that, the pay and recovery direction also no way requires interference from the settled proposition of law in

the three judge Bench expression of the Apex Court in ***National Insurance Company Limited Vs. Swaran Singh***[1] where it was categorically held that unless there is shown conscious knowledge of the owner and he deliberately entrusted the vehicle to the driver, the Insurer cannot be exonerated but for to pay and recover, when once there is policy that covers the risk. There are subsequent expressions of the Apex Court also in this regard and relying upon **Swaran Singh** supra vide **Kusumlatha V. Satbir**[2] **and S.Iyyappan Vs. United India Insurance Company**[3]**.**

4. Now coming to the quantum of compensation whether utterly low as contending concerned, there is no proof filed regarding the earnings of the deceased, much less as driver and at Rs.3,500/- per month. The evidence on record shows he had no driving license at the time of accident as it was expired already. Thereby, to say but for he can drive, he cannot be engaged as a driver without license. However, the fact remains even in the absence of proof of earnings and avocation, an amount of Rs.3,000/- p.m. can be taken into consideration for any non-earning person as laid down by the Apex Court in **Latha Wadhwa vs. State of Bihar**[4] thereby even taken the same from the expression in 2001 with proportionate increase of Rs.300/-p.m. from the date of accident on 11.11.2003 and from the claimants are 4 in number all dependents, if 1/4th deducted towards personal expenses as per **Sarla Varma v. Delhi Transport Corporation**[5], it comes to Rs.2,475/-p.m.x 12 x 16(multiplier)=Rs.4,75,200/- + Rs.10,000/- towards loss of estate, Rs.20,000/- towards care and guidance of two minor children, Rs.25,000/- towards funeral expenses and Rs.1,00,000/- towards consortium to the wife of deceased (1st appellant)vide expression of the Apex Court in **Rajesh v. Rajbir Singh**[6] total of Rs.6,30,000/- which is just compensation even taken from the contention of the

learned counsel for the Insurer of the subsequent decision to Rajesh supra, awarded consortium only Rs.50,000/-, it can be rounded to Rs.6,00,000/-, however by reducing the rate of interest from 9% p.a to 7.5% p.a.

5. In the result, the appeal is allowed in part by confirming the award of the tribunal to the extent of pay and recovery but the compensation of Rs.1,93,000/- is enhanced to Rs.6,00,000/-(Rupees six lakhs only) by reducing rate of interest from 9% p.a. to 7.5%p.a. directing the Insurer to pay first and then to recover from the owner of the crime vehicle. The respondents shall deposit said amount within one month from today, failing which the claimants can execute and recover. The claimants are entitled to the compensation subject to payment of deficit court fee and without which, they cannot execute the award before the tribunal. 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 and 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 claimants (but for to invest in a bank) till such attachment order is sought, if chosen within 2 months from the date of receipt of the order. 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. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:01.07.2016
Vvr

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

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

[3] (2013) 7 SCC 62

[4] (2001) 8 SCC 197=AIR 2001 (SC) 3218

[5] 2009 ACJ 1298

[6] 2013(4)ALT 35(SC)