

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. M.P. No. 5465 OF 2012

IN / AND

M.A.C.M.A. No.110 OF 2016

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JUDGMENT:

The claimants are four in number, no other than wife, minor child and parents of deceased Sk.Khaja claimed aged about 24 years died in the motor accident dated 25.04.2010 while traveling in the Ambassador Car bearing No.AP 16 A G 9911 of 1st respondent insured with 2nd respondent due to alleged rash and negligent driving of 1st respondent—driver, the vehicle turned turtle near Magallur village turning, Nandigama Mandal, Krishna District; since the claim was dismissed in toto without going into the merits in M.V.O.P. No.951 of 2010 on the file of Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Guntur (for short 'the Tribunal') for Rs.4 lakhs under Section 166 of M.V Act, with observation that there is no eye witness examined to attribute the rash and negligent driving of the 1st respondent and PW.1 is not an eye witness; FIR and charge sheet relied are no way prove the same vide Exs.A1 and 2; impugning the same, the claimants filed the appeal with delay of 26 days and the reasons assigned are due to lack of funds; with the contention that the Tribunal gravely erred in dismissing the claim and hence to set aside the dismissal order dated 20.04.2012 and allow the claim as prayed for.

2. Heard learned counsel for claimants/ appellants and learned counsel for 2nd respondent—insurer. The respondent No.1—owner of the Ambassador car who contested before the Tribunal since served failed to attend and hence taken as heard.

3. The delay of 26 days in filing the appeal is condoned and at request of both the parties, the appeal is taken up for hearing.

4. The fact that the deceased and others were traveling in the Ambassador car and the accident resulted due to rash and negligent driving of the Ambassador car turned turtle, the Ex.A5—MVI report shows that there is no mechanical defect of the Ambassador car and the FIR and charge sheet filed against the driver of the Ambassador car even PW.1 is not an eye witness to the accident, when that clearly establishes the rash and negligent driving of the driver of the Ambassador car; the Tribunal was gravely erred in dismissing the claim as if there is no material and as if FIR and charge sheet cannot be the basis, though it can be said what is the evidence before the Tribunal that is criteria and with reference to MVI report, Post Mortem report, FIR and charge sheet when PW.1 deposed the rash and negligent driving which categorically speaks the manner of accident is outcome of rash and negligent driving of the car that turned turtle, when the manner of accident itself speaks, no more proof is required. The said finding of the Tribunal is thus liable to be set aside by holding that the rash and negligent driving of the driver is proved to make the owner liable vicariously also for indemnifying by the insurer subject to policy covering risk.

5. So far as the liability of the insurer impugned in the appeal concerned, it is an Act policy and not a standard package policy, much less comprehensive for no any coverage other than compulsory PA to owner cum driver of Rs.100/- and T.P–Basic Rs.800/-. Therefore, once the policy not covers the risk and not a standard package policy as per IRDA regulations, 2009 to fasten the liability on insurer, the insurer cannot be made liable but for the owner of the car.

6. Coming to the liability of the owner who contested before the Tribunal and even served failed to attend herein, from the finding arrived supra that the accident occurred due to rash and negligent driving of the driver of the Ambassador car of the 1st respondent to

indemnify the acts of the driver vicariously, the claimants are entitled to compensation against the 1st respondent—owner of the car.

7. Now coming to the quantum of compensation as per Ex.A4—post mortem report, the deceased was aged about 24 years, the multiplier applicable for the age group 21 to 25, is '18' and so far as the earnings of the deceased concerned, there is no proof of avocation being centring worker, thereby to be taken as only coolie and even as per ***Latha Wadhwa vs State of Bihar***^[1] in the absence of proof of earnings minimum to be taken at Rs.3,000/-, from that expression by the date of accident the income of the deceased to be taken at Rs.3,800/- per month, since the claimants are four in number, who are parents, wife and minor child being all are dependents, 1/4th to be deducted towards personal expenses, it comes to Rs.2,850/- per month X 12 X 18 = Rs.6,15,600/-. Apart from it, Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.10,000/- towards care and guidance to the minor child, in all it comes to Rs.7,60,600/-, which is the just compensation that can be awarded against the 1st respondent and in favour of claimants. As the claimants paid Court fee for Rs.4,00,000/-, the deficit court fee shall be paid for the remaining compensation by the claimants in Court below, failing which the decree cannot be executed.

8. Accordingly, the appeal is allowed awarding compensation Rs.7,60,600/- (Rupees Seven Lakhs Sixty Thousand Six hundred only) with interest at 7.5% per annum against 1st respondent from the date of petition till the date of realization. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.06.01.2016

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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[\[1\]](#) AIR 2001 SC 3218