HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.1711 of 2011
IN/AND
M.A.C.M.A No.410 of 2016

JUDGMENT:

Heard. The delay of 92 days in filing the appeal is condoned subject to not entitled to interest on any enhanced amount, but from today.

2. The appeal is taken up for hearing. Heard learned counsel for the claimants/appellants and the second respondent-insurance company. The first respondent, owner of the Auto, even though contested before the Tribunal, impleaded in the appeal, dismissed for default on 12.03.2015.

3. Perused the material on record.

4. The claim is made under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for Rs.4,00,000/- for the death of the deceased Podalkar Shivaji, aged about 20 years, unmarried. The claimants are parents and younger sister of the deceased. Younger sister is not a dependent, but for, on parents. The Tribunal having held that the accident was occurred due to rash and negligent driving of the driver of 1st respondent's Auto bearing No.AP-23-V-3857, which was insured with the second respondent, fixed the joint liability. Further, the Tribunal held that though policy covered the risk, the driver of auto is not having valid driving licence as can be seen from the evidence of R.Ws.1 and 2 along with Ex.B.2-driving licence extract and hence, fixed the liability on the owner of the auto only by exonerating the insurer while awarding compensation of Rs.2,52,000/- with interest at 7.5% per annum which is now impugned as unsustainable on grounds of exonerating the insurance company and of the compensation awarded is utterly low; whereas it is the contention of learned counsel for the insurer that the award of the Tribunal holds good and for this Court while sitting in appeal

there is nothing to interfere.

5. The claimants are parents and younger sister of the deceased. The age of mother of the deceased is shown 45 years in the claim petition. For persons aged between 41 to 45 years, appropriate multiplier is 14 as per **Sarla Verma v. Delhi Transport Corporation**[1]**.** The Tribunal has taken Rs.3,000/- per month as earnings of the deceased. He was aged about 20 years and accident occurred on 15.02.2008. Even as per **Latha Wadhwa vs. State of Bihar**[2] in the absence of proof of earnings, minimum income of Rs.3,000/- is to be taken. Even as per the expression of the **Latha Wadhwa's** case referred to supra, the minimum earnings of the deceased with proportionate increase can be taken at Rs.3,600/- per month therefrom 50% is deducted towards personal expenses of the deceased as per **Sarla Verma (supra)**, the loss of dependency comes to Rs.1800 x 12 x 14 = Rs.3,02,400/- besides Rs.25,000/- towards funeral expenses and Rs.10,000/- loss of estate as per **Rajesh V. Rajbir Singh**[3] thus, total just compensation comes to Rs.3,37,400/-.

6. So far as exoneration of the second respondent insurer from the liability is concerned, even from the evidence of R.Ws.1 and 2 though policy covers the risk, the driver of the auto is not having valid licence. There is nothing to show that the owner deliberately allowed the driver of the crime vehicle to drive the vehicle without licence and as such it is not a case for exoneration of the insurer from the liability but for pay and recovery once the policy covered the risk vide decisions in ***National Insurance Company Limited Vs. Swaran Singh & Others***[4]***, Kusumlatha and others V. Satbir and Others***[5] ***and S.Iyyappan Vs. United India Insurance Company***[6]***.***

7. Accordingly and in the result, the appeal is partly allowed by

enhancing the compensation from Rs.2,52,000/- to Rs.3,37,400/- with liability of the second respondent insurer to pay and recover from the first respondent and with interest at 7.5% p.a. on the enhanced compensation from today till realization. The respondents shall deposit the said amount within one month, failing which the claimants can execute and recover. 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 the balance 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 the claimants (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.

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

Dr. B. SIVA SANKARA RAO, J

JANUARY 21, 2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date: 21.01.2016

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[1] 2009 ACJ 1298

[2] (2001) 8 SCC 197=AIR 2001 (SC) 3218

[3] 2013 ACJ 1403

[4] (2004) 3 SCC 297=2004-ACJ-1

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

[6] (2013) 7 SCC 62