

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.874 OF 2005

JUDGMENT:

The appellants 1 and 2, no other than the parents of the deceased by name Ch.Ashok, maintained the claim under Section 166 of the M.V.Act on the file of the learned Chairman, Motor Accidents Claims Tribunal–cum-VI Addl.District Judge, (FTC), Vikarabad, Ranga Reddy district, (*for short, 'Tribunal'*), in O.P.No.1040 of 2001 for compensation of Rs.2,00,000/- (Rupees two lakhs only) against the owner and Insurer of the lorry bearing No.47 APT 5660 for the accidental death of the deceased on 22.07.2001, while the deceased among others of the village were proceeding in the said lorry with alleged load of tomatoes, for the tribunal granted of Rs.1,48,500/- (Rupees one lakh forty eight thousand and five hundred only) with interest at 9%p.a.by fixing liability against the 1st respondent(owner of the crime lorry) only by accepting the contention of the 2nd respondent-Insurer, from the 1st respondent owner remained exparte, that the deceased was unauthorized passenger for not owner of the goods to cover any risk under the policy, vide award dated 25.11.2004, impugning the same preferred the present appeal seeking to fix liability against the Insurer also as well as to grant quantum as prayed for.

2. Heard the learned counsel for the appellants-claimants and also Sri K.Venugopal Reddy, learned counsel for the 2nd respondent-Insurer and perused the material on record.

3. The appellants/claimants filed I.A.No.1352 of 2015 to receive as additional evidence a copy of policy which is already exhibited as Ex.B.1. In fact, the same is received and compared and tallies with Ex.B.1 policy thereby not marked again to avoid repetition.

4. It is the contention of the learned counsel for the claimants-appellants that the policy covers risk of three passengers in all. In fact,

on perusal of the policy, as rightly contended by the learned counsel for the Insurer, it speaks the permit is with seating capacity of the three, whereas, the policy is only act policy. Thus, it does not cover risk of any passengers. Once such is the case, the tribunal is right in its holding that the policy no way covered the risk of the deceased to travel in the goods vehicle much less others among the villagers to board and travel with alleged load of tomatoes.

5. Now coming to the quantum of compensation, the tribunal taken the earnings of the deceased at Rs.1500/- p.m. but the claim is deceased was earning at Rs.3000/- p.m. In fact, there is no record to prove regarding his earnings or source of income, in that case, as per the expression of the Apex Court in **Latha Wadhwa vs. State of Bihar**^[1] in which in the absence of proof of earnings, taken minimum of Rs.3000/- p.m. even to be taken the same in the present case, and if half deducted towards personal expenses of the deceased as bachelor, it comes to Rs.1500/- x 12 x 11 (multiplier) as per **Sarla Varma v. Delhi Transport Corporation**^[2] besides Rs.10,000/- towards loss of estate, Rs.25,000/- towards funeral expenses in all Rs.2,33,000/- and the claim made is Rs.2,00,000/-, thereby what the tribunal awarded of Rs.1,48,500/- requires to be enhanced to Rs.2,33,000/- subject to payment of deficit court fee however by reducing rate of interest from 9%p.a. to 7.5%p.a. by confirming fixation of liability as rightly awarded by the tribunal against the owner of the vehicle for the Insurer cannot be made liable.

6. Accordingly and in the result, the appeal is partly allowed by confirming the award of the tribunal with regard to the liability against the owner of the crime vehicle by exonerating the 2nd respondent-Insurer and by enhancing the compensation of Rs. Rs.1,48,500/- to Rs.2,33,000/- subject to payment of deficit court fee by the claimants/appellants, however by reducing rate of interest from 9%p.a. to 7.5%p.a. The claimants are entitled to the compensation subject to

payment of deficit court fee without which they cannot execute award before the tribunal. The 1st respondent-owner of the crime vehicle is directed to deposit the amount within one month from today, failing which the claimants can execute and recover. On deposit or execution, the claimants are entitled to withdraw the said amount. There is no order as to costs in the appeal. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:01.07.2016

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[\[1\]](#) (2001) 8 SCC 197=AIR 2001 (SC) 3218

[\[2\]](#) 2009 ACJ 1298