

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CMA No.3845 OF 2003

JUDGMENT:

The claimants 4 in number no other than the wife, two major sons and mother of the deceased by name Kondalu aged about 45 years as per the Ex.A.5 post mortem report, maintained the claim for Rs.3,00,000/- u/ sec. 163-A of the Motor Vehicle Act,1988 (*for short, 'the Act'*) against the owner and Insurer of the lorry bearing No.AP 11 T 6872 for the accidental death of Kondalu on 23.08.98 with the averments that the deceased was proceeding in lorry bearing No.AP 11T 2475 as its driver along with cleaner K.Samba Siva Rao with a load of iron, when reached Gandepalli, the crime lorry of the 1st respondent insured with 2nd respondent coming from Rajahmundry in opposite direction, dashed the lorry in which the deceased was proceeding, resulting his death on the spot and cleaner of the lorry sustained injuries vide crime No.97 of 98 and from the contest mainly of 2nd respondent- Insurer for the 1st respondent remained exparte and the non-joinder of the other lorry owner and Insurer is fatal to the accident which is the result of the negligence of the deceased while driving the lorry for no fault of driver of the 1st respondent apart from no valid driving license, having held the accident was the result of negligent driving of the driver of the 1st respondent's lorry, awarded compensation of Rs.1,20,000/- with interest at 9%p.a. by its award dated 17.04.2003, it is impugning the same, the present appeal is maintained with the contentions that the compensation is utterly low and to grant as prayed for.

2. No doubt as per the expression of the Apex Court in Khenyei Vs. NIAC Limited¹, non-impleadment of owner and Insurer of the other

¹ (2015) 9 SCC 273

vehicle is not a ground much less fatal to the maintainability but for the owner and Insurer (the respondents herein) entitled to seek for apportionment against the lorry in which the deceased was proceeding by filing execution petition in honouring the award claim.

3. Now coming to the quantum, even taken the earnings of the deceased as on the date of the accident at Rs.15,000/- p.a. to be read as Rs.30,000/- p.a. as per the expression of Kishan Gopal Vs. Lala², 1/3rd deducted towards personal expenses and even taken 14 multiplier, it comes to Rs.2,80,000/- (Rs.30,000/- $\times$ 2/3rd $\times$ 14) apart from medical expenses of Rs.9,500/-, it comes to Rs.2,89,500/- rounded to Rs.2,90,000/- is the just compensation to be awarded however by reducing the interest from 9%p.a. to 7.5%p.a.

4. Accordingly and in the result, the appeal is allowed in part by enhancing the compensation of Rs.1,20,000/- awarded by the tribunal to Rs.2,90,000/- by reducing the rate of interest from 9%p.a. to 7.5%p.a. from the date of petition till realization. It is made clear that on payment of compensation, the 2nd respondent-Insurer is entitled to make a claim by execution for apportionment of the liability in the same award before the tribunal against the owner and Insurer of the lorry bearing No.A.E.T.2475 driven by the deceased. In other respects, the award of the tribunal holds good. No costs. Consequently, pending miscellaneous petitions, if any, in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 26.09.2016
Vvr

² 2014 (1) SCC 244