HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

MACMA No.310 of 2010
AND
Cross Objections SR.No.11340 of 2010

JUDGMENT:

The 2nd respondent insurer, among the 2 respondents including the driver-cum-owner of auto bearing No.AP-1-U-7514, of the claim maintained by the injured since died pending O.P.No.41 of 2007 filed under Section 166 of Motor Vehicles Act on the file the Motor Vehicle Accident Claims Tribunal-cum-II Additional District Judge, Karimnagar at Jagtial, his wife brought on record as legal representative as 2nd petitioner vide order of the Tribunal dated 29.04.2008 in I.A.No.346 of 2008, impugning the award of the Tribunal dated 08.12.2008 of awarding compensation of Rs.1,68,500/- with 8.5% per annum with joint liability subject to liability to the extent of pay and recovery, maintained the appeal with the contentions that the driver-cum-owner not having valid driving license, then the insurer cannot be made liable and thereby fixing of liability to the extent of pay and recovery by the Tribunal unsustainable and apart from the exoneration.

The learned counsel for the insurer reiterated the same. Whereas the learned counsel for the claimant maintained cross objections with the contentions that the awarded amount is utterly low, hence to allow the cross objections as prayed for.

Heard both sides and perused the material on record.

So far as the accident is the result of the rash and negligent driving of the driver-cum-owner of the auto i.e., 1st respondent to the claim petition not in dispute. Against that finding, there is no need to sit for any little interference even is proved from the reasons assigned. However, coming to the quantum of compensation and exoneration of the insurer, law is fairly settled that even he is owner-cum-driver and from the imperfect license and since averred not having driving license of public carriage LMV Auto, the insurer cannot avoid to indemnify the third party claim but for to the extent of pay and recovery. Once such is the conclusion arrived and but for clarified there is nothing to interfere.

Coming to the rate of interest awarded at 8.5% per annum, same is excessive to reduce to 7.5% from the settled expression in **TN Transport Corporation v. Raja Priya**[1] and **Rajesh v. Rajbir Singh**[2]. Coming to the quantum either excessive or utterly low concerned, no doubt it is the submission of the insurer that the principle of ***actio personalis mioritur cum persona*** has application to the present facts however not tenable and the insured himself maintained the claim and he died 4 years after the accident and same succeeds by the 2nd petitioner as legal representative and same is different from claim not maintained by the claimant in his lifetime and from the death is in consequence, said contention has no substance.

Coming to the quantum, out of Rs.1,68,500/- awarded Ex.A3-would certificate shows 4 injuries where 3 injuries which are described simple and by referring to MGM Hospital, Hanamkonda by the Area Hospital, Mancherial, there is mentioning of patient as unconscious and there is congenial hydrocephalus and Ex.A4-

[1] (2005) 6 SCC 236
[2] 2013 ACJ 1403=(4) ALT-35(SC).

reference letter also speaks the same and the evidence of PWs.2 and 3 of MGM and Jaya hospital, Hanamkonda, showing he was admitted on 09.04.2004 and C.T. scan of head and brain showed Hydrocephalus and he was treated for diffuse axonal injury and discharged on 30.04.2004 i.e., after 20 days and the Tribunal awarded Rs.75,000/- for the head injury and simple injuries, which is excessive to reduce to Rs.50,000/-.

Accordingly and in the result, the appeal is partly allowed by reducing the compensation from Rs.1,68,500/- to Rs.1,43,500/- also by reducing the rate of interest from 8.5% to 7.5% and the Cross Objections of claimants is dismissed. In other aspects the award of the Tribunal holds good.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 01.11.2016
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