HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.678 of 2010

JUDGMENT:

The 2nd respondent—insurer among two respondents including owner of the tractor and trailor bearing Nos.AP 03 AC 6569 and 6570, maintained the appeal impugning the award dated 02.02.2010 passed in O.P. No.161 of 2008 on the file of the Motor Accidents Claims Tribunal-cum-V Additional District and Sessions Judge, Tirupati (for short 'the Tribunal') awarding compensation of Rs.5,22,000/- with interest at 6% per annum against the claim made under Section 166 of the Motor Vehicle Act, 1988 (for short 'M.V. Act') for compensation of Rs.8,00,000/- by the wife, two minor children and mother of the deceased by name Velampati Sankaraiah, aged about 29 years as per Ex.A3—post mortem report.

2) Learned standing counsel for insurer reiterated the contentions in the grounds of appeal vis-a-vis the oral submissions are that the Tribunal gravely erred in fixing liability instead of total exoneration from the fact that the deceased was not supposed to travel by sitting on the mud guard of the tractor to which the alleged trailor with sugar cane propelled and it is therefrom fallen from the moving tractor unauthorised passenger thereby, for not supposed to sit in any place unless there is a permit with seating capacity including by violation of Section 123 of M.V Act. Thus to exonerate the insurer by fixing liability on the owner of the vehicle, if any, by setting aside the award fixing joint liability on the insurer and prayed to allow the appeal.

3) Whereas it is the submission of the learned counsel for respondents/ claimants that the award of the Tribunal holds good but

for to enhance the rate of interest, thereby sought for dismissal of the appeal

4) Heard learned standing counsel for insurer and learned counsel for respondents—claimants. Perused the material on record.

5) The brief averments of the claim petition are that the deceased along with his brother Velampati Raja were engaged by 1st respondent—owner of tractor and trailor for transporting sugar cane to the sugar factory from the field of 1st respondent. The coolie under the owner of the vehicle comes within the meaning of Workmen Compensation Act, for attending with goods even under Section 147 (1) (c) of the Act not required to cover any additional payment of premium for the risk coverage. However, there is no seating capacity to the tractor, not even for travelling and there is no permit even there is a clear violation. Apart from the same, the driver of the vehicle not supposed to allow him to travel and the deceased was not supposed to sit so also his brother on either side of the mud guards of the tractor having only one seating capacity, which is meant for driver in between the two mud guards. Thus, there is a clear violation of the statutory provision and there is no permit and the deceased is unauthorised passenger. However, the fact remains that the deceased while travelling as unauthorised passenger, though otherwise entitled to travel along with the goods, representing the owner of the goods, even from the Act policy, leave about the policy is for agriculture package coverage. When the deceased was travelling as unauthorised passenger the death is not directly happened but after fall from the tractor and trailor when he became a third party, the trailor turned turtle and the load of sugar cane fallen on him, thereby he died on the spot. Thus once he died as a third party, the

act policy does not covers the risk but for the contribution of the deceased as unauthorised passenger. The insurer is liable to pay for 50% of the compensation and the deceased is liable for the remaining 50% contribution. In this regard the legal position is very clear from the Judgments of the Madras High Court in ***Thoznihalar Transport Company V. Valliammal***[1]***, A.Subrahmanian V. Mani***[2]***,*** of the Delhi High Court in ***National Insurance Co. Ltd V. Savitri Devi***[3], of the Bombay High Court, Panaji bench in ***I.O.C V. Edward B.Juj.R***[4] and another judgment of the Delhi High Court in ***Kanwar Shamsher Singh V. Satbir Singh***[5] and also of our High Court in ***United India Insurance Co. Ltd. V. Kurva Yejju Mallamma***[6]***.***

6) Now coming to the quantum of compensation, the accident was dated 17.02.2008. Undisputedly the deceased travelled as coolie. There is no proof of earning Rs.150/- per day. Even in the absence of proof of earnings, as per ***Lata Wadhwa vs Stte of Bihar***[7], minimum earnings can be taken at Rs.3,000/- per month and as the accident is occurred nearly seven years after the expression, it is just and reasonable to take the earnings of the deceased with prospective increase at Rs.3,600/- per month; as the claimants are four in number, as per the expression of the Apex Court in ***Sarla Verma vs Delhi Transport Corporation***, 1/4th to be deducted towards personal expenses it comes to Rs.2,700/-. The multiplier applicable is '17' as per Sarla Verma (supra) and not 18 as taken by the Tribunal, thereby the loss of dependency comes to Rs.5,50,800/- (Rs.2,700/- X 12 X 17). Apart from

[1] 1990 ACJ 201 (Madras)
[2] 1990 ACJ 37 (Madras)
[3] 1991 ACJ 991
[4] 1995 ACJ 1106
[5] 2006 ACJ 789
[6] 2007(1) ALD 364
[7] AIR 2001 SC 3218

it, the claimants are entitled to Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards of loss of estate, Rs.20,000/- towards care and guidance of minor children, in all it comes to Rs.6,55,800/-, out of it 50% therein comes to Rs.3,27,900/- rounded to Rs.3,28,000/- is the just compensation.

7) Accordingly and in the result, the appeal is party allowed by fixing 50% liability on the insurer even the deceased travelled as unauthorised passenger and originally his death is not while travelling as unauthorised passenger but after fall from trailor he became third party, when the load falling on him, he died, even act policy covers the risk and earlier violation of the permit and sit on the mud guard not come in the way much less to order pay and recovery. In view of the above, by reducing the compensation from Rs.5,22,000/- to Rs.3,28,000/- by enhancing the rate of interest from 6% per annum to 7.5% per annum from the date of petition till realisation. In other respects the award of the Tribunal holds good. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.23.12.2016
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HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते