HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. M.P. No. 2246 OF 2011

IN / AND

M.A.C.M.A. No.384 of 2016

JUDGMENT:

Heard.

2) The delay of 33 days in filing the appeal is condoned as the reasons assigned are in obtaining certified copy and approaching the advocate and filing the appeal by payment of fee and court fee from paucity of funds, the delay is condoned subject to condition not entitled to interest on any enhanced amount but from today.

3) At the request of both parties, the appeal is taken up for hearing.

4) The claimants, who are parents of the deceased by name V.Muniraja, aged about 25 years as per Ex.A3—post mortem report, in the claim M.V.O.P. No.182 of 2008 on the file of Motor Accidents Claims Tribunal-cum-IV Additional Sessions Judge, Triupathi, maintained against the owner and insurer of goods auto bearing No.AP 03 W 3749 with averments and evidence of PW.2 with reference to Exs.A1, A3 and A4—FIR, Post Mortem report and charge sheet respectively and while the deceased and his friend—PW.2 was proceeding in another motor cycle behind the motor cycle of the deceased and when they reached near Gangireddipalli at about 7.00 pm, an auto bearing No.AP 03 W 3749 driven by its driver in a rash and negligent manner and dashed the motor cycle of the deceased, for which the deceased fell down

and sustained multiple injuries and succumbed to injuries therefrom.

5) It is from the evidence, the Tribunal held the accident was the result of rash and negligent driving of the driver of the auto of 1st respondent insured with 2nd respondent undisputedly.

6) Whereas in support of the contention of the respondent No.2—insurer, who contested there respondent No.1 owner remained exparte, with reference to Ex.X1—letter issued by RTA, Tirupati dated 17.02.2010 deposed by employee of RTA vis-à-vis employee of RWs.1 and 2, there was no proof regarding driver got valid driving licence and he was charged under Section 181 M.V Act also for the charge sheet filed by the claimants and already exhibited as Ex.A4 and also from the X1 certificate proved through the RW.1.
RW.2 is the Investigating Officer, who filed charge sheet further deposed in proof of the fact of no driving licence produced. No doubt, MVI report not filed by either side as invariably it must contain the column regarding driving licence particulars. However, what could be the endorsement in MVI is once covered by Ex.X1 certificate issued by RTA of no driving licence particulars what all the cross examination answers by RWs.1 and 2 is not verified the records prior to 1993 of possessed licence or not. It could be no way disputed that had there been any licence, there could definitely for the LMV transport vehicle or a renewal at least that could find place otherwise. Thereby, the Tribunal however totally exonerated the insurer in fixing liability for

Rs.3,16,500/- with interest at 7.5% per annum, on 07.01.2011 in M.V.O.P. No.182 of 2008 against the owner of the vehicle.

7) The evidence on record establishes the driver was not having valid driving licence, there is once such evidence from Ex.X1 with reference to evidence of RWs.1 and 2 and the Investigating Officer—RW.2 with reference to the own document under Ex.A4 categorically stated as held by the Apex Court also in ***NIC vs Rattani***[1]***,*** the documents relied on by the claimants can be relied on by the insurer if the contents of the document proves the defence of the insurer, suffice to say the driver not having any type of driving licence. No doubt, there is nothing on record further to say owner got conscious knowledge and deliberately allowed the driver with no licence or without any verification owner even not summoned by insurer much less any notice to produce the particulars or atleast to know whether any licence produced by the driver before the owner irrespective of fake or genuine to establish that further fact. In fact, in such a factual scenerio with reference to law the three judge bench expression of the Apex Court in ***National Insurance Company Limited Vs. Swaran Singh & Others***[2] categorically held that was also placed reliance before the Tribunal of case of pay and recovery the Tribunal ignored the same in exonerating the insurer instead of fixing pay and recovery liability. In fact, the said expression of Swaran Singh reiterated by two subsequent expressions i.e., ***S.Iyyappan Vs. United India Insurance Company***[3] ***and Kusumlatha and others V.***

Satbir and Others[4] that once policy covered the risk, any violation of the policy conditions including of driving licence also one of the grounds for pay and recovery and not for exoneration to indemnify the claim of third party from the contractual obligation under the policy.

8) Now coming to the quantum of compensation, the Tribunal rightly not believed Ex.A5 salary certificate for no proof to say the deceased was working as carpenter by avocation and inquest report also referring the same. It fact, at best shows his avocation and not any proof regarding earnings, in the absence of proof of earnings of the claim under Section 166 M.V. Act as held in ***Latha Wadhwa vs State of Bihar***[5], minimum Rs.3,000/- per month to be taken and the accident was dated 24.11.2007 about 6 years after the said expression even taken Rs.3,600/- per month, if half deducted towards personal expenses and the multiplier applicable from the age of the mother of the deceased is '14', the loss of dependency comes to Rs. 3,02,400/- (Rs.1800 X 12 X 14). Apart from it, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate as per the Apex Court's expression in ***Rajesh vs Rajbir Singh***[6]***.***

9) Accordingly and in the result the appeal is partly allowed by enhancing the compensation from Rs.3,16,500/- to Rs.3,37,400/- and, the claimants are not entitled to interest on the enhanced compensation but from today, while upholding the other findings of the Tribunal with directions for pay and

recovery as follows. The Insurer shall deposit said amounts within one month from the date of receipt of judgment, failing which the claimants can execute and recover. It is made clear that the insurer is entitled, while depositing half of the amount payable for 1st respondent, from pay and recovery liability to approach the Tribunal to direct the RTA concerned not to register any transfer of auto and to seek for attachment of the 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 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.

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

Dr. B. SIVA SANKARA RAO, J

Dt.09.02.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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M.A.C.M.A. M.P. No. 2246 OF 2011
IN / AND
M.A.C.M.A. (SR) No.21845 of 2011

Date: 09.02.2016

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[1] 2009 (2) SCC 75

[2] 2004 ACJ 1

[3] 2013 (7) SCC 62

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

[5] AIR 2001 SC 3218

[6] 2013 ACJ 1403