HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.843 OF 2016

JUDGMENT:

The claimants, who are wife and minor children of deceased Balaram, maintained the claim M.V.O.P. No.94 of 2007 on the file of Motor Accidents Claims Tribunal-cum-II Additional District Judge, East Godavari District at Amalapuram (for short 'the Tribunal') under Section 166 of the Motor Vehicle Act, 1988 (for short 'M.V Act') for Rs.4 lakhs and the Tribunal awarded on 10.12.2010 Rs.3,82,000/- with interest at 7.5% per annum while fixing joint liability against respondent Nos.1 and 2 dismissed against respondent No.3—insurer and it is impugning the same, maintained the appeal.

2) The M.A.C.M.A. M.P. No.2102 of 2011 is filed to condone the delay of 58 days in filing the appeal, is condoned subject to condition of petitioner not entitled to interest on enhanced amount but from today.

3) Heard learned counsel for the appellants/ claimants and also heard respondent No.3—insurer of the vehicle. Respondent No.1—driver of the vehicle even served failed to attend, hence taken as heard. Respondent No.2—owner of the vehicle remained *ex parte* before the Tribunal and even impleaded in this appeal dismissed for default vide ***Meka Chakradhara Rao vs Yelubandi Babu Rao***[1] and the same is recorded.

4) It is the contention of the learned counsel for appellants that the Tribunal gravely erred in exonerating the insurer instead of fixing joint liability as there is LMV driving licence, which makes no difference between transport and non-transport and in size of the vehicle or its driving but for nature of use that is not a ground and the other contention is compensation awarded by the Tribunal is utterly low, hence to enhance the compensation.

5) Whereas it is the contention of the insurer that the Tribunal is right in exonerating the insurer and for this Court while sitting in appeal there is nothing to interfere with this reasoned finding referring to the expressions of the Apex Court particularly in ***National Insurance***

Company Limited vs Kusum Rai[2]. The other contention is so far as the quantum of compensation concerned, there is no specific urge to enhance and thereby sought for dismissal. So far as the Driving licence is concerned, the fact that the evidence no way points out the owner consciously and deliberately allowed the driver without having valid driving licence though otherwise required to verify, that too when policy covered the risk undisputedly and in force to exonerate the insurer and the Tribunal ought to have been at best fixed liability of pay and recovery instead of total exoneration, as laid down by the Apex Court in ***National Insurance Company Limited Vs. Swaran Singh & Others[3] S.Iyyappan Vs. United India Insurance Company[4] Kusumlatha and others V. Satbir and Others[5]***.

6) Coming to the quantum of compensation, no doubt, the claim is for Rs.4,00,000/- and the Tribunal awarded compensation of Rs.3,82,000/- with interest at 7.5% per annum vide award dated 10.12.2010 in O.P. No.94 of 2007, the appeal is maintained for awarding balance amount of Rs.18,000/- by restricting the appeal claim to the Tribunal claim. In fact, this Court cannot ignore the expression of the three judge bench of the Apex Court in ***Rajesh vs Rajbir Singh[6]*** in categorically saying, it is the duty of the Tribunal or the appellate Court to award just compensation irrespective of the claim made is for an insufficient sum or under valued. Once such is the principle of law ruling the filed, the contention of the insurer cannot be given credence, if the claimants are otherwise entitled to.

7) Now coming to the quantum of compensation from the above, the Tribunal estimated the earnings of the deceased at Rs.2,500/- per month and disbelieved the evidence of deceased used to work under one Dharmarao of Gatchakayalapora for fishing and for other purposes of fishing for sale and undisputedly but for oral evidence, there is no material placed on record. However, the fact remains from the claim under Section 166 of M.V Act and from the expression of ***Latha Wadhwa vs State of Bihar[7]*** in

the absence of proof of earnings, minimum Rs.3,000/- to be taken and the accident was dated 09.01.2007 nearly six years after the expression, even there from taken the earnings with prospective increase at Rs.3,600/- per month and if 1/3rd deducted towards personal expenses as dependants are three in number as per the three judge bench expression of the Apex Court in ***Rajesh vs Rajbir Singh***[8] referring to ***Sarla Verma vs Delhi Transport Corporation***[9] and the suitable multiplier applicable, from the age of the deceased about 38 as per Ex.A4—post mortem report, is '15' as per Sarla Verma supra, it comes to Rs.4,32,000/-. Apart from it, Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.20,000/- towards care and guidance to the minor children, in all it comes to Rs.5,87,000/- to which the claimants are entitled to.

8) Accordingly and in the result, the appeal is allowed by enhancing the compensation from Rs.3,82,000/- (Rupees three lakhs eighty two thousand only) to Rs.5,87,000/- (Rupees Five lakhs eighty seven thousand only) subject to payment of deficit court fee for Rs.1,87,000/- under Rule 475 of A.P. M.V Rules, failing which the claimants are not entitled to execute the award and the claimants are not entitled to interest on the enhanced amount but from today till realization and so far as the liability of the insurer concerned, it is fixed to the extent of pay and recovery by setting aside the total exoneration. The insurer shall deposit said amount within one month from the date of the receipt of the order, failing which the claimants can execute and recover. It is made clear from the settled expressions of the Apex Court in **United Insurance Co. Ltd Vs. Lehru**[10] & ***Oriental Insurance Company Limited Vs. Nanjappan & Others***[11] that the insurer is entitled, while depositing the amount payable, if not deposited or paid any amount so far to deposit in bank to approach the Tribunal to direct the RTA concerned not to register any transfer of the crime vehicle and to seek for attachment of the crime vehicle or other property of the insured as an assurance for execution and recovery in the same

proceedings or under revenue recovery as the M.V 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. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.08.02.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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[1] 2001 (1) ALT 495 DB

[2] 2006 ACJ 1336

[3] (2004) 3 SCC 297=2004-ACJ-1

[4] (2013) 7 SCC 62

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

[6] 2009 ACJ 1298

[7] AIR 2001 SC 3218

[8] 2013 ACJ 1403

[9] 2009 ACJ 1298

[10] JT-2003(2)SC-595=2003-ACJ-611=2003-ACT–611(SC)

[11] 2004 (13) SCC 224=2004-SAR(civil)-290