HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.41 of 2010

JUDGMENT:

The appellants six in number, no other than wife, major sons, major unmarried daughter and parents of the deceased by name, Bukya Bhagavan Naik, aged about 45 years as per Ex.A3-Post Mortem Report, who maintained the claim for Rs.5,00,000/- under Section 166 of the Motor Vehicles Act, against the owner and insurer of Mahindra Max bearing No.AP 25U 5738 and after contest from what the tribunal awarded on 17.11.2008 of Rs.3,80,000/- with interest at 9% p.a., impugning said quantum as utterly low and requires enhancement, maintained the appeal.

2. The 1st respondent even served failed to appear and the 2nd respondent also. But the learned counsel Sri Ravi Shankar Jandhyala, now representing the 2nd respondent in arguing that the award of the tribunal holds good and there is nothing to interfere with the award but to reduce rate of interest from 9% to 7.5% p.a., as per the settled expressions for which there is no need of cross objections.

3. Heard the learned counsel for the appellants/claimants and the learned counsel for the insurer/2nd respondent and perused the material on record.

4. The manner of accident on 05.06.2007 was that PW.1-wife of the deceased along with the deceased were travelling in Mahindra Max bearing No.AP 25U 5738 from Gopya Thanda to Hyderabad, near

Toopran Village, the driver drove the vehicle in rash and negligent manner in high speed and dashed against a lorry from its behind, due to which P.W.1 sustained injuries and her husband and five others died on the spot and crime No.155 of 2007 under Sections 304-A and 337 I.P.C. Ex.A1-FIR and Ex.A2-remand report was registered against the driver-M.S.Reddy. So far as the finding of the tribunal therefrom of the accident was the result of the rash and negligent driving of the driver of Mahindra Max, in which they were traveling concerned, there is no dispute and Ex.B1-policy is a standard package policy and to cover the passengers risk from additional premium collected also not in dispute, to say, insurer joint and severally liable to indemnify the owner-1st respondent of the Mahindra Max supra, subject to any violation of permit and carrying 12 persons (6 injured + 6 deceased) against the maximum seating capacity of 5+1.

5. Now coming to the quantum of compensation and denial of liability by the insurer on that count concerned.

6. From the evidence of the Insurer covered by Exs. B.1 to 5, from the Ex.B.1 policy for the 5 passengers premium collected Rs.1050/- and as per the Ex.B.2, it is with seating capacity of 6 including driver and the ownership is that of 1st respondent to the claim petition and Ex.B.3 permit no way speaks further with any more seating capacity though it is not as a stage carriage and Ex.B.5 chargesheet shows 5 persons including the deceased herein breathed lost and 6 sustained injuries. It is with more than double overloading though the vehicle is, as per Ex.A.8, in a fit condition and it is a passenger vehicle and

definitely there is violation of the permit and policy with overloading including from the admission of P.W.1 of 12 persons in all were traveling besides Ex.A.2 and Ex.B.5 substantiate the same as also discussed supra. Once the seating capacity is 5+1 and there are 5 or 6 death claims including the present one, leave about 6 injured, the maximum liability of the Insurer is only for 5 passengers other than driver from the policy collected only for 5 passengers and the permit is only for 5 passengers and the vehicle capacity is also for 5 passengers +1, the breach is not so fundamental to overloading to avoid liability but for to pay and recover at best and there is no material filed by the Insurer saying the principle laid down in National Insurance Company Limited Vs.Anjana Shyam[1] invoked to confine to the maximum 5 claims other than the claim of driver if any to indemnify and pay for the highest claims for apportionment among all the claimants, for the other being made liable by the owner personally, then to apportion the all. In the absence of such showing and for that even any appeals not shown pending filed by the Insurer, irrespective of any contention of already satisfied the maximum 5 claims, the only recourse open when not invoked the above recourse as per the principle laid down in Anjana Shyam supra by the Insurer, it is just in directing the Insurer to pay and recover. From that and also for violation of permit with overloading with pay and recovery directions, for no cross-objections even from the Insurer so far as the liability already arrived against the Insurer concerned to avoid and for

[1] (2007)7 SCC 445

the additional liability even from what is observed supra to that extent.

7. From this now coming to the quantum, the claim is under Section 166 of the M.V.Act, for Rs.5,00,000/-. The accident dated 05.06.2007 the claimants are 6 in number of whom two are major sons remaining 4 including daughter and parents are the dependents and 1/4th to be deducted towards personal expenses. So far as income of the deceased there is no proof, the tribunal has taken Rs.3,000/- p.m. as per guideline in the expression of Apex Court in Latha Wadhwa vs. State of Bihar[2] where even there is no proof of income and earnings, it can be reasonably estimated at Rs.3,000/- p.m. for any non-earning member and even for housewife as domestic contribution and same is taken now, from the accident was on 05.06.2007 Rs.3,600/- p.m. taken reasonably and after 1/4th deduction, it comes to Rs.2,700/- x 12 x the multiplier 13 is taken for persons above 45 years, it comes to Rs.4,21,000/- and Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.50,000/- towards consortium are added to it, Rs.5,06,000/- rounded to Rs.5,00,000/- is the just compensation the claimants are entitled to.

8. In the result, the appeal is partly allowed by enhancing the compensation from Rs.3,80,000/- to Rs.5,00,000/- however by reducing rate of interest from 9%p.a. to 7.5%p.a. from the date of claim petition till the date of realization with joint and several liability of the insurer and insured (respondents 1 and 2) to pay by the insurer first then to recover from the owner. The respondents shall

[2] (2001) 8 SCC 197=AIR 2001 (SC) 3218

deposit said amount within one month, failing which the claimants can execute and recover. It is made clear from the settled expressions of the Apex Court in Lehru (supra) & Nanjappan (supra) 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 per the MV Act, 1988 and also ask the Tribunal not to disburse the deposited amount to claimant (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.

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

Dr. B. SIVA SANKARA RAO, J

Date:05.01.2017

Vvr.