HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.Nos.1730 & 4719 of 2008

COMMON JUDGMENT:

M.A.C.M.A.No.4719 of 2008 is filed by the injured claimant impugning the award of the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, Tirupati, in O.P.No.453 of 2004 dated 01.10.2007 in the claim of the injured against the owner and insurer of the passenger carrying jeep bearing No.AP-03-D-639 under Section 166 of Motor Vehicles Act (for short 'the Act') originally for Rs.8,50,000/- later amended as per orders in I.A.No.558 of 2006 for enhanced sum of Rs.22,50,000/-, from the evidence on record particularly of PWs.3 to 5, the Doctors, with reference to Ex.A2-wound certificate and Ex.A8 discharge summary and Ex.A20-disability certificate of 90% permanent disability with loss of sensation from the spinal injury to the back and disability of L5 fracture with nerve root involvement, the Tribunal taken the earnings at Rs.24,000/- per annum with '16' as multiplier from the age above 37 years for the 90% disability arrived at Rs.3,45,600/-, for medical expenses from the bills covered by Exs.A4, A12, and A21 for Rs.1,92,110/- and additional Rs.20,000/- + Rs.80,000/- for pain and sufferance, extra diet and attendant charges and Rs.3,00,000/- for future medical treatment and Rs.5,000/- for transportation charges and Rs.15,000/- expectation of life totally Rs.9,57,710/-.

The insurer 2nd respondent maintained M.A.C.M.A.No.1730 of 2008 on the contention of the quantum is excessive so also the rate of interest and for the several amounts awarded with no basis and insurer not even liable for not the person who insured the vehicle used the vehicle, but allowed his friend to use the vehicle by violation of permit and the Tribunal ought to have exonerated the insurer from liability, hence to allow the appeal. Whereas on the other side, another appeal filed by the claimant i.e., MACMA.No.4719 of 2008, it is contended that the Tribunal ought to have allowed the amended claim of Rs.22,50,000/- as prayed for and awarding of Rs.9,57,710/- is utterly low and even there is evidence regarding the properties owned from the pattadar passbooks and Adangal. The Tribunal considered the claimant as coolie instead of agricultural income and supervisory loss that should have been considered and also the future prospects and hence to allow the appeal pursuant to the rival claims impugning the award of the Tribunal referred supra elaborate arguments advanced.

This Court heard the arguments in part and on 19.09.2016 directed the injured petitioner to appear before the 2 Doctors of SVIMS Hospital, Tirupati to be constituted by the Head of the Hospital to ascertain the present condition of the petitioner and certify the same as to the present medical disability functional and its percentage with impact on rest of life in a sealed cover and report received dated 19.10.2016 which describes after examination from the L5 traumatic fracture with bladder and bowel incontinence and paraparesis with weakness of both limbs, though underwent L4, L5 decompression, fragment removal and bone graft placement way back in 2003 even after 13 years with complete weakness in all groups of muscles in the lower limb except for grade I power in the knee and ankle (which is just a flicker of contraction) and he has no control over his bladder and bowel is catheterized and there is no improvement and his physical disability can be said 100%. It is pursuant to the report, the matter taken up for final hearing as referred supra.

Heard and perused the material on record.

A perusal of Ex.B1 policy shows it is a standard package policy. The fact that the inmates of the vehicle can be covered by the policy particularly with reference to IRDA regulations dated 16.11.2009 cannot be disputed as same is also reiterated by the Apex Court in **National Insurance Company Limited Vs. Balakrishnan**[1].

The learned counsel for the claimant injured placed reliance upon one of the judgments of this Court outcome of same accident according to them in M.A.C.M.A.No.3983 of 2008 dated 31.08.2016 of the risk is covered to the inmates of the vehicle. The petitioner is one of the inmates that were injured undisputedly from the vehicle turned turtle due to the rash and negligent driving of the vehicle and the police final report in the form of charge sheet against the driver from the FIR after investigation as outcome of his negligence, policy covered by direct evidence including that of the petitioner PW.1 as rightly concluded by the Tribunal as the accident was the result of rash and negligent driving of the driver of the jeep.

Now coming to the insurer from the policy otherwise covered the risk from the alleged violation of the permit entitled to indemnify or not concerned, from the policy conditions the vehicle can be even on hire and not for own use. There is clear mention of

[1] 2013 ACJ 199

private car policy B package. A private car to mean only personal use and even to take anybody either friends or inmates of the family and the order of the lower Court from the pleadings and evidence on record it is not the injured herein but one Surendra Naidu that took the vehicle. Once such is the case, if at all shown there is violation of the permit for the permit violation the insurer cannot avoid liability, but for on payment and recover at best from the owner, like in the case of other permit violations of the driver having no valid driving license from the settled expressions. Once such is the case, at best joint liability, it is just to be liable for pay and recover beyond that insurer cannot avoid liability to indemnify the injured claim concerned.

Now coming to the quantum of compensation, the Tribunal in Para 10 of the order from detailed discussion of the evidence on record with reference to PW.1 and his wife PW.2 evidence and from Ex.A13-10(1) Account and No.3 Adangal and Ex.A14-pattadar pass book which shows the property stands in the name of the father of injured petitioner and not at all in the name of the petitioner and he did not choose to examine any one with regard to that the petitioner cultivated the lands for nothing reflects from the revenue record in the absence of the oral evidence of he is cultivating the land apart from land remains what is the loss is supervisory if at all to asses that also does not arise in this case but for to estimate the earnings. The accident is happened on 30.05.2003 as per **Latha Wadhwa vs. State of Bihar**[2] in the absence of proof of earnings minimum of Rs.3,000/- to be taken including in case of domestic contribution of house wife or any non-earning member or

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

where there is no proof of earnings such as prospective in increase in earnings does not arise but for after the expression by the date of accident there is 2 years gap to estimate the earnings at Rs.3,200/- per month and multiplier '16' rightly taken by the Tribunal no way requires interference and coming to the disability concerned, no doubt before the Court it is 90% disability and when the Court called for panel of medical officers referred supra which is marked for reference as Ex.C1, it shows 100% for all the 13 years. Once such is the case, instead of 90% it is to take at 100% disability for total disability of functional moments, then it comes to Rs.3,200/-x12x16=Rs.6,14,400/-. Coming to the other heads of compensation awarded by the Tribunal concerned, the medical expenses awarded of Rs.1,92,110/- and for the injury of Rs.20,000/- towards pain and sufferance, it no way requires interference, transport charges Rs.5,000/-. The other head of loss of expectation of life Rs.15,000/-, future medical treatment of Rs.3,00,000/- and Rs.80,000/- to extra diet and attendant charges, there is no basis thereby the said amount of Rs.3,95,000/- required to be reduced to Rs.2,00,000/-, which comes to Rs.10,31,510/- rounded to Rs.10,32,000/- is the just compensation to award by upholding the rate of interest.

Accordingly and in the result, both the appeals are allowed in part while ordering pay and recovery while enhancing the compensation from Rs.9,57,710/- to Rs.10,32,000/- and subject to condition of pay and recovery directions to the insurer with the following conditions:-

It is made clear from the settled expressions of the Apex Court in ***United India Insurance Co. Ltd. V. Lehru***[3] & ***Oriental Insurance Company Limited Vs. Nanjappan & Others***[4] 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 claimant, 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.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 27.03.2017
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[3] JT-2003(2) SC 595 = 2003 ACJ 611
[4] (2004) 13 SCC 224=2004-SAR(civil)-290