

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.713 of 2010

JUDGMENT:

The 2nd respondent-insurer among two respondents including owner of the motor cycle bearing No.T/ R AP 05 BBT/ R 2902, having been aggrieved by the award of the tribunal dated 29.12.2009 in MATOP.No.1233 of 2006 maintained by the four claimants, who are major sons and married daughters of the deceased-M.Bhushanam, maintained the claim for Rs.2,00,000/- under Section 166 of the Motor Vehicles Act (for short 'the Act'), and from the contest by the insurer, since awarded by the tribunal as prayed for with interest at 7.5%p.a. impugning the same, maintained the appeal.

2. Heard both sides. Perused the material on record.
3. Undisputedly, the claimants are major sons and married daughters and none are dependents on the deceased. The Full Bench of this Court in Dr.Ganga Raju Sowmini v. Alavala Sudhakar Reddy¹ held that irrespective of the claimants are non-dependents, claim is maintainable either under Section 163-A or 166 of the Act, as the case may be, because legal representatives are defined as per the Rules under Section 2(1) C.P.C. by explaining the meaning from Andhra Pradesh Motor Vehicles Rules and the claimants are legal representatives to

¹ 2016(2) ALD 226

claim compensation. There is an observation therein saying dependency is a matter which will have a bearing on the issue, fixation of compensation and apportionment of compensation if there are more than one claimant but at the same time in view of the plain and unambiguous language of the Section 166 of the Act, the term legal representative does not mean dependent only, thereby the non-dependents are entitled to compensation, if there is no dependent even by maintaining a claim.

4. Having regard to the above, the claim is maintainable. But the only thing is what is the amount of dependency to be considered in case of dependents following the guidelines of *Sarla Verma v. Delhi Transport Corporation*² have no application in the case of non-dependents as what is the contribution of the deceased to that alone to be considered, leave about even in the case claim under Section 163-A of the Act from the structured formula.

5. Once such is the case, from the very claim petition averments as also reproduced in para-12 line No.4 of the impugned award, the claimants mentioned that the deceased was earning Rs.75/- per day. Had there been no averment, the tribunal should have followed the expression of the Apex Court in *Lata Wadhwa v. State of Bihar*³, of minimum Rs.3,000/- to be taken with proportionate increase from the date of expression to

² 2009 ACJ 1298

³ AIR 2001 (SC) 3218

the date of accident but for the clear and cogent pleading and not even explained in evidence. Once such is the case, it is just to take maximum of Rs.2,250/- p.m. as earnings of the deceased. If 1/3rd of the amount is deducted towards personal expenses of the deceased, it comes to Rs.1,500/- p.m. and the claimants are not dependents thereby, what is the contribution of the deceased alone to be taken into consideration in the factual scenario from the non-dependents and deceased has no other near relative to contribute, it is just to consider the contribution at Rs.1,000/- p.m. and Rs.12,000/- p.a. and the same is multiplied with the multiplier '12' (applicable from the age of the deceased above 50 years as per *Sarla Verma v. Delhi Transport Corporation*⁴), it comes to Rs.1,44,000/-. Apart from the same, the claimants are also entitled to Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. In total Rs.1,79,000/- rounded to Rs.1,80,000/- is the just compensation to reduce from Rs.2,00,000/- awarded by the tribunal.

6. So far as the other contention of the insurer regarding driving license and non-liability concerned, undisputedly even from the reply notice of the owner, the driver has no driving license apart from M.V.I. Report-Ex.A5 discloses the same. Leave about charge sheet mentions the charge under the Motor

⁴ 2009 ACJ 1298

Vehicles Act is not filed. Once such is the case, there is a force in the contention of the learned counsel for the insurer non-liability. However, once the policy covered the risk which fact is not in dispute, as held in *National Insurance Company Limited v. Swaran Singh*⁵ reiterated in subsequent expressions in *Kusum Lata v. Satbir*⁶ and *S. Iyyappan v. United India Insurance Company*⁷, it is a case for pay and recovery,

7. Accordingly, the appeal is partly allowed by reducing the compensation from Rs.2,00,000/- to Rs.1,80,000/- and the joint liability awarded by the tribunal is converted into pay and recovery liability. The pay and recovery directions are as follows:

The insurer shall deposit said amount within one month from the date of receipt of a copy of this order, failing which the claimant can execute and recover. It is made clear from the settled expressions of the Apex Court in *United India Insurance Co. Ltd. V. Lehu*⁸ and *Oriental Insurance Company Limited Vs. Nanjappan & Others*⁹ that the insurer is entitled, while depositing the amounts payable, if not deposited or paid any amounts so far to deposit the balance amount 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

⁵ (2004) 3 SCC 297=2004-ACJ-1

⁶ AIR 2011 SC 1234

⁷ (2013) 7 SCC 62

⁸ JT-2003(2) SC 595 = 2003 ACJ 611

⁹ (2004) 13 SCC 224=2004-SAR(civil)-290

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 Motor Vehicles Act, 1988, and also ask the tribunal not to disburse the deposited amount of the respective claimant (but for to invest in a bank) till such attachment order is made. However, after the same, the tribunal shall not withhold the amounts of the claimant, if there is any necessity to permit for any withdrawals but for to invest the respective balance amounts separately in fixed deposits in a nationalized bank. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

8. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:06.01.2017
pab

