

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**MACMA MP No.2149 OF 2012**

**IN/AND**

**MACMA No.2548 OF 2015**

**ORDER:**

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This appeal is filed challenging the order dated 24.09.2011 in O.P.No.513 of 2008 on the file of Motor Accidents Claims Tribunal-cum-V Additional District Judge (Fast Track Court), West Godavari District, Eluru .

2. MACMA.M.P.No.2149 of 2012 is filed under Section 5 of the Limitation Act, 1963 to condone the delay of (79) days in filing the appeal.
3. Heard the learned counsel for the claimants/appellants and also the learned counsel for respondents 2 and 4, same insurer for the two vehicles viz., tractor and trailer bearing Nos.AP 24 5827 and AP 16 TX 2953. The 3<sup>rd</sup> respondent, owner of auto bearing No.AP 37Y 2840 remained exparte before the Tribunal and this Court vide order dated 09.10.2015 recorded the factum of not necessary party to the appeal and of any impact on the maintainability of appeal from such dismissal and remained exparte before the Tribunal and the same is fortified by the expression of this Court in **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**, the same is recorded. Though the 1<sup>st</sup> respondent served, remained exparte. Perused the material on record.
4. It is at the request of both the parties, while allowing the delay condonation application and directing the Registry to number the appeal if other wise in order, taken up the appeal for final hearing.
5. Now coming to the manner of accident, the award of the Tribunal clearly speaks that the accident occurred due to the negligence of driver of the tractor-tailor for no fault of the auto, in which the deceased was traveling. There is no dispute of insurance covered for the auto, as Ex.B1 is the

certificate of policy of tractor and Ex.B2 is certificate of policy of auto; and the oral evidence of RWs.1 to 4 speaks, there is no policy coverage for auto, but there is policy coverage for tractor-trailor. The evidence on record shows including from RW.4, owner of tractor-trailor that he has no proper license and paid penalty being the owner-cum-driver also from the statement of his father relied on by the insurance company, confronted, as per V.C.R.report bearing No.2128386 dated 22.02.2008 i.e., non transport driving license light motor vehicle and same is also deposed with reference to charge by RW.3, Assistant Sub-Inspector and it is there from trial Court totally exonerated the insurer from liability. In fact, once there is a policy covered the risk as per ***Insurance Company Limited Vs. Swaran Singh & Others, S.Iyyappan Vs. United India Insurance Company*** and ***Kusum Lata .vs. Satbir***, the insurer has to pay and recover and that it is not a case of no policy but for light motor vehicle non-transport and the tractor-trailor is a light motor vehicle and permit is not filed to say whether it is for exclusively agricultural purpose or for any commercial purpose, and even taken for commercial purpose from not possessing light motor vehicle transport, the insurer cannot avoid liability merely because he is the driver cum owner of the tractor-trailor, so far as the liability to the third party in the claim concerned, but for to pay and recover. Accordingly, the finding of the tribunal exonerating the insurer of the tractor-trailor from liability is to be set aside by fixing liability to the extent of pay and recover.

6. Coming to the quantum, which is in dispute, all the three claimants are not dependants; but for the fact not in dispute of the second claimant even shown 19 years, still unmarried daughter of the deceased and she has shown as dumb, third claimant is major and married daughter not dependant and the first claimant is major son, not dependant. As per the settled law, if the dependants are more than two, 1/3<sup>rd</sup> to be deducted towards personal expenses. However, where the claim to be considered is from dependency and when the claimants or any of them not dependants, it is not the dependency but, what the contribution the

deceased could have to them alone that to be taken into consideration. Having regard to the above and more particularly, from the observations of the Apex Court in **Sarla Verma v Delhi Transport Corporation**, paras 30 to 33, half of the amount has to be deducted towards personal expenses, as there is only one dependant. Second claimant and others are not dependants and the contribution of the deceased to them only to be taken into consideration and not the total dependency. If such is the case, the deceased claimed as fish vendor locally, she is even taken as domestic house woman and the domestic contribution of a house woman as per the Apex Court in **Lata Wadhwa V State of Bihar**, Rs.3,000/- p.m. minimum to be taken and after the expression to the date of accident on 17.02.2008, it is nearly seven years with proportionate increase even Rs.3,700/- p.m. taken and half is deducted towards personal expenses, it comes to Rs.1,850/-p.m. and contribution by the deceased to the claimants is Rs.2,88,600/- (Rs.1850/-x12x13(multiplier as per **Sarla Verma** (supra) from the age of the deceased was 48 years), Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate as per **Rajesh and others Vs. Ranbir Singh and others**, total comes to Rs.3,23,600/- and what the Tribunal awarded is Rs.2,82,000/- with interest at 7% p.a. is required to be enhanced to Rs.3,24,000/- with interest at 7.5% as per **Rajesh**(supra).

7. Accordingly and in the result, while allowing the appeal in part with joint and several liability of the insurer and insured (respondents 1 and 2) to pay by the insurer to the claimants and then to recover from the insured. The 2<sup>nd</sup> respondent herein shall 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 **United India Insurance Co. Ltd. V. Lehu & Nanjappan** (supra) 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 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 of the respective claimants (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 claimants, 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. Accordingly, the appeal is partly allowed by enhancing compensation from Rs.2,82,000/- to Rs.3,24,000/- and also rate of interest from 7% to 7.5% and by apportioning the compensation of half of the amount to the second claimant and remaining half equally to the claimants 1 and 3.
9. Miscellaneous petitions, pending if any, shall stand closed.

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**Dr. B. SIVA SANKARA RAO, J**

**Date:06-11-2015**

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