

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.MP No.528 OF 2012

In/and

MACMA No.2640 OF 2015

JUDGMENT:

The appellant-claimant filed unnumbered appeal MACMASR No.6151 of 2015 along with a petition MACMAMP No.528 of 2012 seeking to condone the delay of 496 days in preferring the appeal against the award dated 08.05.2009 in M.A.T.O.P.No.834 of 2006 on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum-I Addl. District Judge), Khammam (*for short, 'Tribunal'*), filed under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), for the claim of Rs.1,50,000/- after contest the tribunal since granted Rs.43,000/- with interest at 7.5% p.a. against the 1st respondent(owner of the crime Auto bearing No.AP-36-U-5213).

2. Heard the learned counsel for the appellant and 1st respondent-owner of the crime auto who remained *exparte* before the tribunal, even in the appeal impleaded dismissed for default and restoration petition in MACMAMPNo.4572 of 2015 on 14.10.2015 filed and allowed, stated served sufficiently failed to attend and from the submission of the learned counsel for the appellant not necessary party as per the expression of in **M.Chakra Rao v. Y.Baburao**^[1], taken as heard and also the 2nd respondent-Insurance company served in the appeal as well as in the petition MACMAMP No. 528 of 2012 but failed to attend, taken as heard and perused the material on record.

3. From the submission of the claimant in the affidavit that due to lack of funds not in a position to approach the counsel to engage in cause filing the appeal and length of delay is not criteria, the delay is condoned and the registry is directed to number the appeal if otherwise in order and the appeal is taken up for hearing.

4. On perusal of the evidence of P.Ws. 1 and 2 shows there is a

fracture of left humerus besides injury to Urethra but in the cross-examination, P.W.2 stated that in Ex.A.3 wound certificate, there is no mention of rupture of urethra but for some more abrasions not deposed by P.Ws.1 and 2 and further stated that fractured bones are united and the petitioner is fit for doing his normal duties.

5. Having regard to the above, for the fracture and other simple injuries referred supra and for the treatment, medical expenses and for attendant and transport charges what the tribunal awarded of Rs.43,000/- is enhanced only for Rs.45,000/- only confirming the rate of interest at 7.5% p.a. So far as the exoneration of the Insurer is concerned, even from the evidence of the R.Ws.1 and 2 (employees of the R.T.A.) with reference to Exs.B.1 to B.3 and X.1 to X.3, the driver got LMV (Light Motor Vehicle) non-transport driving licence, whereas, the auto is L.M.V. transport. Hence, the tribunal ought to have been awarded the compensation against the Insurer also to the extent of pay and recovery instead of total exoneration as held in the expressions of the Apex Court in ***National Insurance Company Limited Vs. Swaran Singh***^[2], ***Oriental Insurance Company Limited Vs. Nanjappan & Others***^[3] ***Kusumlatha V. Satbir***^[4] and also in later expression ***S.Iyyappan Vs. United India Insurance Company***^[5].

6. In the result, the MACMAMP No.528 of 2012 is allowed and consequently MACMA No. 2640 of 2015 is allowed in part fixing the liability against respondents 1 and 2 (the owner and Insurer of the crime vehicle), directing the 2nd respondent-Insurer to pay and then to recover. The respondents shall deposit said amount within one month from today, failing which the claimant can execute and recover. It is made clear 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. There is no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 12.11.2015

Vvr

[1] 2001 (1) ALT 495 DB

[2] (2004) 3 SCC 297=2004-ACJ-1

[3] (2004) 13 SCC 224=2004-SAR(civil)-290

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

[5] (2013) 7 SCC 62