HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.1395 OF 2010

JUDGMENT:

Among the two respondents, the 2nd respondent—insurer in O.P. No.595 of 2007 filed by two claimants no other than wife, and minor child of the deceased Shaik Naseeruddin, aged about 28 years for the death, which is outcome of alleged accident occurred on 29.07.2007 near Ramreddyguda, Bokkalonipalli Village and Mahaboobnagar District, with a claim under Section 166 M.V Act for Rs.5 lakhs and the Tribunal awarded Rs.3,80,000/- with interest at 7.5% per annum. Impugning the same, the present appeal is maintained against the claimants supra and owner as respondent No.1 in the claim petition and respondent No.3 to the appeal with contentions that the Tribunal should have been exonerated the insurer, for the vehicle is falsely implicated one month later to accident after deliberations and consultations and even the vehicle is not road worthy to ply as proved from the evidence of RWs.1 to 4, more particularly with reference to RW.2 and it is also the contention with reference to the said evidence of the collusive outcome between the owner and driver of the vehicle in planting the vehicle to make the insurance Company with liability by implicating it about one month after the accident by showing as if the driver voluntarily surrenders and made a confession during investigation, apart from not even an eye witness examined in the claim maintained among PWs.1 and 2 and no worth document filed among Exs.A1 to A9, but for the so-called MVI report and charge sheet in implicating the vehicle and driver and thereby also from the factum of the vehicle is not trustworthy, the appeal is tobe allowed by exonerating the insurer.

2) Whereas it is the submission of the learned counsel for respondent Nos.1 and 2/ claim petitioners that the award of the Tribunal holds good, for this Court while sitting in appeal there is

nothing to interfere and hence to dismiss the appeal.

3) Heard and perused the material on record.

4) Undisputedly, the vehicle is insured and the policy covered the risk of third party and for that matter even Act policy under Sections 147 and 149 of M.V Act also covers third party risk.

5) Now coming to the implication of the vehicle concerned, what the insurer adduced evidence through its employee—RW.1 herein, if at all, not an eye witness or with no even personal knowledge or basic information, the other witness examined is from RTA office about the vehicle is not fit for plying on the road being unworthy.

6) It is one of the circumstances, however when the police investigation clearly speaks that the vehicle involved and from arrest of the driver and also disclosure about the involvement and that is the evidence in support of it placed reliance also with reference to the MVI report, the crime detail form as Exs.A3 to A6 beside the deceased met with accidental death as revealed from Ex.A3—post mortem report, leave about Ex.A2—inquest report. Even the person who reported the accident might not have knowledge of the vehicle involved, that is not suffice to say a subsequent investigation is untrue, in the absence of examination by insurer at least as a court witness the driver or owner with right to cross examination to elicit any false implication. Coming to the contention of the vehicle was unworthy of plying on road to say a false implication or collusion between claimants and the owner and driver of the vehicle respectively, in fact had the vehicle not been road worthy, there is no meaning for the insurer to continue the policy but for cancellation and if at all to refund the proportionate premium that was undisputedly not done by the insurer.

7) It is thus suffice to say the insurer cannot be exonerated from liability but for to pay and recover for violation of policy conditions and plying the vehicle from the owner deliberately despite vehicle not

fit for plying on road.

8) Accordingly and to that extent the appeal is allowed confirming the compensation awarded by the Tribunal with rate of interest modifying from joint liability to the extent of pay and recover from the owner. The respondent No.2 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. Lehru**[1] & ***Oriental Insurance Company Limited Vs. Nanjappan & Others***[2] 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) Consequently, miscellaneous petitions if any pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:21-12-2015
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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M.A.C.M.A. No.1395 OF 2010

Date:13.11.2015

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[1] JT-2003(2) SC 595 = 2003 ACJ 611

[2] (2004) 13 SCC 224=2004-SAR(civil)-290