

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.8131 of 2012 IN/AND

MACMA No.2727 OF 2015

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ORDER:

The 3rd respondent to the claim petition in O.P.No.398 of 2010 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Srikakulam, in the claim filed by parents of the deceased by name, B.Ravi, aged nearly 20 years, who died in motor accident of the year 2008, under Section 166 of the Motor Vehicles Act for Rs.4 lakhs against the driver, owner and insurer, who are respondents 1 to 3, respectively, of the tractor bearing No.AP 30U 7982, by award dated 31.07.2012 fixed joint liability to the extent of payment by the insurance company of Rs.2,41,000/-, with interest at 9% p.a. and to recover from the owner of the vehicle, impugning the legality and correctness, the un-numbered appeal is filed by saying the claimants as respondents 1 and 2 and driver and owner of the vehicle as respondents 3 and 4 to the appeal and filed the application to condone the delay of 23 days in filing the appeal.

2) The claimants are contesting and even respondents 3 and 4 driver and owner served failed to attend and they also remained exparte before the tribunal. At request of the learned counsel for the claimants and the learned counsel for the insurer, heard the application to condone the delay as well as un-numbered appeal. The

delay of 23 days in filing the appeal is condoned and at request, the appeal is taken up for hearing.

3) Heard and perused the material on record.

4) The contentions in the grounds of appeal mainly are that the tribunal wrongly passed the order of pay and recovery instead of exonerating without even such right to fix liability of pay and recovery but for should have exonerated the insurance company by dismissing the claim against the insurer for violation of the policy viz., there is no extension of the validity of the permit of the vehicle expired of the light motor vehicle transport and there is no driving license of LMV-transport but LMV non-transport to the 1st respondent, driver at the time of accident.

5) Whereas it is the contention of the learned counsel for the claimants as respondents 1 and 2 to the appeal that the tribunal is right in its conclusion and for this Court while sitting in appeal there is nothing to interfere.

6) In the grounds of appeal the expressions of the Apex Court in **National Insurance Co. Ltd. Vs. Kusum Rai**^[1], **Sardari Vs. Sushil Kumar**^[2] and **National Insurance Company Limited Vs. Parvathneni**^[3] are referred. In fact, these three expressions are not in deviation to the three judge Bench settled expression of the Apex Court in **Insurance Company Limited Vs. Swaran Singh**^[4]. It is needless to say further, as even the

subsequent expressions in **S.Iyyappan Vs. United India Insurance Company**^[5]. It is very clear regarding the liability of the insurer to pay and recover and not be exonerated the insurer even the driver got imperfect license.

7) Having regard to the above, there is nothing to interfere with the award of the tribunal on that count but for appreciate the contention of interest at 9% awarded by the tribunal is excessive, as per the expression in **TN Transport Corporation v. Raja Priya**^[6] and three judge Bench in **Rajesh Vs. Ranbir Singh**^[7], to reduce to 7.5% p.a.

8) Accordingly and to that extent, the appeal is allowed in part while confirming the finding of the tribunal and by reducing rate of interest from 9% to 7.5% , only from the date of appeal till the date of realization. In other respects the award of the tribunal holds good. There is no order as to costs.

9) Pay and recovery directions are clarified as hereunder:

The insurer has to pay to the claimants and then to recover from the insured. The insurer shall deposit the 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**^[8] & **Oriental Insurance Company Limited Vs.**

Nanjappan^[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 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.

10) Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 03-12-2015

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^[1] 2006 ACJ 1336

^[2] 2008 ACJ 1307

^[3] 2009(8) SCC 785

^[4] (2004) 3 SCC 297=2004-ACJ-1

^[5] (2013) 7 SCC 62

^[6] (2005) 6 SCC 236

[\[7\]](#) **2013 ACJ 1403**

[\[8\]](#) JT-2003(2) SC 595 = 2003 ACJ 611

[\[9\]](#) (2004) 13 SCC 224=2004-SAR(civil)-290