

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.1012 of 2010

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JUDGMENT :

Heard the learned counsel for the appellant/insurer vis-à-vis the learned counsel for the 1st respondent/claimant. Though the 2nd respondent/owner of the vehicle even served failed to attend. Perused the material on record.

2. It is in O.P.No.1420 of 2007 maintained by the injured claimant under Section 166 of the Motor Vehicles Act for Rs.5,03,000/- for the injuries sustained by him in the motor accident dated 26.05.2007 of the auto belongs to the claim petition 1st respondent insured with 2nd respondent bearing No.AP 36 W 9626, after contest and with reference to evidence of PWs.1 to 3 including two doctors and Exs.A1 to A8 and Exs.X1 and X2-case sheet and driving license extract and of RWs.1 and 2 and Exs.B1 and B2, the tribunal while holding the insurer cannot be totally exonerated but for to pay and recover from the imperfect driving license of the driver of the claim petition 1st respondent's auto concerned, when admittedly covered by policy. The present appeal insofar as that finding concerned when once the policy admittedly covers the risk, from the difference between transport and non-transport driving license, including

from the evidence of 2nd respondent through RW.2, the insurer cannot be exonerated but for to pay and recover by elaborating the procedure of pay and recovery.

3. Coming to the quantum of compensation, the tribunal in all awarded Rs.3,01,000/- for the injuries suffered including with 40% disability from the evidence on record, more particularly with reference to Ex.X1, case sheet and evidence of the two doctors PWs.2 and 3, there are compound fracture of right iliac bone, fracture of right acetabulum, fracture of right head of femur with central dislocation of right hip besides another lacerated wound of 4x4" over right iliac crest area, as can be seen from Ex.A2-injury certificate and Ex.A3 discharge summary of Satya Hospital proved from the evidence of PWs.2 and 3 also with reference to Ex.X1, the tribunal for the injuries awarded only Rs.62,000/- and thus it requires enhancement. No doubt, though the tribunal awarded medical expenses as per bills-Ex.A7 Rs.75,000/- including extra nourishment and attendant charges, the same is no doubt excessive to reduce but for the injuries what the amount awarded be considered as Rs.75,000/- and for the medical expenses and extra nourishment for Rs.62,000/-; it no way requires interference with the award of the tribunal on the total sum arrived.

4. Accordingly and in the result, the appeal is

disposed of while confirming the quantum of compensation for nothing to reduce and by elaborating the liability of pay and recovery directions hereunder:

The insurer has to pay to the claimant and then to recover from the insured. The insurer shall deposit the said amount within one month, 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.**

Lehru^[1] & ***Oriental Insurance Company Limited***

Vs. Nanjappan^[2] 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 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 amount separately in fixed deposits in a nationalized bank. Rest of the award of the tribunal holds good. There is no order as to costs.

5. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:18-12-2015

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

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