HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.1713 OF 2012

JUDGMENT:

This appeal is preferred by the claim petition 2nd respondent-Insurer aggrieved by the award dated 29.02.2012 in M.A.T.O.P.No.500 of 2008 passed by the learned Chairman of the Motor Accidents Claims Tribunal–cum-II Addl. District Judge-FTCI Khammam, (*for short, 'Tribunal')*, filed u/s. 166 of the Motor Vehicle Act,1988 *(for short, 'the Act')*, by the appeal respondents-claimants 1 to 9 for the claim of Rs.3,00,000/-against the appellant herein including the owner of the crime vehicle Hero Honda Passion Plus motor cycle bearing No.AP 05 AK 2298 for the rash and negligent riding of the rider of the motor cycle of the 1st respondent-owner of crime vehicle in resulting the accidental death of father by name Yakub of the appeal respondents 2 to 9 and husband of the appeal 1st respondent on 23.09.2007. The tribunal after contest by the appellant herein and owner of the crime vehicle (respondent No.10 herein) awarded compensation of Rs.3,36,800/- with interest at 7.5% p.a. more than what is claimed fixing joint liability against both the respondents with the grounds in the appeal that the tribunal failed to appreciate the breach of conditions and violation of the Act that the owner of the crime vehicle allowed the rider who was not possessing driving license. Hence to exonerate the Insurer.

2. Heard the learned counsel for the appellant-Insurer and also the learned counsel for the respondents 1 to 9 and notice sent to the owner of the crime vehicle-10th respondent in the appeal is returned unserved from the endorsement though taken to the same address shown in the claim petition hence deemed as served and taken as heard and perused the material on record.

3. Now the issue involved is the exoneration of the Insurer from liability in saying the rider of the motor cycle has no driving license. The evidence placed before the tribunal is the evidence of R.Ws. 1

and 2 on behalf of the appellant-Insurer shows that the rider of the motor cycle not possessing valid driving license by referring to Ex.A.2 chargesheet and in Ex.A.3 M.V.I. report it is shown that an amount of Rs.900/- imposed as fine for not possessing driving license. It is therefrom the Insurance company places reliance to claim exoneration however, tribunal negated said contention and several expressions referred on both sides regarding liability or non liability respectively.

4. In fact, the Apex Court in three judge Bench in ***National Insurance Company Limited Vs. Swaran Singh***[1] categorically held that unless it is proved that there is conscious knowledge of the owner and deliberate entrustment of the vehicle to the driver, the Insurer cannot be exonerated and once the Ex.B.1 policy covers the risk, the Insurer is liable to the extent to pay first and then to recover from the owner instead of total exoneration and also as per the subsequent expressions of the Apex Court in **Kusumlatha V. Satbir**[2] **and S.Iyyappan Vs. United India Insurance Company**[3]

5. In the result, the appeal is allowed in part by modifying the joint liability to pay and recovery, directing the appellant-Insurer to pay first and then to recover. The respondents shall deposit said amount within one month from today, failing which the claimants 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 and 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.

6. The respondents 1 to 9/claimants are given liberty to approach the tribunal for withdrawal of any amount to consider.

7. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 08.12.2015
Vvr

[1] (2004) 3 SCC 297=2004-ACJ-1
[2] AIR 2011 SC 1234 = 2011 (2) SCJ 639
[3] (2013) 7 SCC 62