HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.2754 of 2009

JUDGMENT :

The 2nd respondent among two respondents of the claim petition filed by the parents of the deceased by name, Devadas in O.P.No.305 of 2008, under Sections 163-A and 167 of the Motor Vehicles Act, in the claim for Rs.2,75,000/- since the tribunal awarded Rs.2,42,000/- With interest at 9% p.a. by fixing joint liability with a direction to pay and recovery against the insurer, the insurer/2nd respondent preferred the appeal against the claimants and owner of the vehicle.

2. Owner of the vehicle remained exparte before the tribunal and even failed to attend.

3. Heard the learned counsel for the appellant vis-à-vis the learned counsel for the respondents 1 and 2/claimants and perused the material on record.

4. Leave about the quantum. The main contention in the grounds of appeal by the insurer is tribunal gravely erred in fixing joint liability even to the extent of pay and recovery, though there is no coverage of risk under policy-Ex.B1, that is even exhibited before the tribunal and wrongly placed reliance on the expression in **the New India Assurance Company v. Kalia Behera**[1] which has no application to the facts as the question of indemnity does not arise when there is no coverage of risk by policy issued.

5. Whereas it is the contention of the learned counsel for the claimants that what the tribunal awarded is just and for this Court while sitting in the appeal, there is nothing to interfere,

hence, for dismissal but for saying no cross objections to enhance.

6. The law is fairly settled more particularly, from the expression of the Apex Court in **Sanjeev Kr. Samrat vs National Insurance Co. Ltd**[2] referring to earlier expressions including three judge Bench expression of **National Insurance Co vs Prembai Patel**[3] apart from the subsequent expression of the Apex Court in **Manager, N.I.C. v. Sajju P.Paul**[4]**,** that even under Section 147(1) of the Motor Vehicles Act amended in 1994, unless the policy covers the risk and unless even for act policy though for specified, the insurer cannot be made liable.

7. Having regard to the above, when the deceased claimed as cleaner, leave about contention of the insurer of unauthorized passenger in the goods vehicle, even there from a reading of Section 147(i) of the Act no way covers the risk of a cleaner but for driver and in the case of passenger vehicle conductor/ticket collector and in the case of a goods vehicle owner or representative of goods as such when the policy no way covers risk of a cleaner by additional premium and act policy not covers the risk of a cleaner, fixing of joint liability even to pay and recovery by the tribunal is unsustainable.

8. Accordingly and in the result, the appeal is allowed setting aside the award of the tribunal by confining the award only against the 1st respondent/owner of the vehicle, needless to say any amount deposited if not received by the claimants, the insurer is entitled to withdraw the same by virtue of this order, whatever amount in deposit any permission awarded to the claimants, the insurer is entitled to recover from the owner and

claimants jointly.

Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:15-12-2015
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[1] 2008 ACJ 1536

[2] 2013 ACJ Page 1

[3] 2005 ACJ 1323

[4] 2013 SCC 41