

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.2907 OF 2015

JUDGMENT:

The claimants 1 to 3 (husband and sons of the deceased Nagamma) of O.P.No.184 of 2009 on the file of the learned Chairman of the Motor Accidents Claims Tribunal—cum—Prl.District Judge, Medak at Sangareddy(*for short, 'Tribunal'*) maintained claim under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), for Rs.3,00,000/- for the death of Begari Nagamma in accident on 04.04.2009 while travelling in the auto bearing No.AP23 W 4640 belongs to the 1st respondent insured with the 2nd respondent covered by Ex.B.2 policy caused by its driver by driving in rash and negligent manner for the tribunal granting of Rs.2,25,044/-, preferred the appeal with contentions in the grounds of appeal that the quantum awarded of the tribunal is utterly low, that the tribunal should have seen that it makes no difference of the auto driver possessed LMV non-transport or transport and the exoneration of the Insurer of the tribunal is unsustainable, hence to fix joint liability against the Insurer also and grant compensation as prayed for.

2. Along with the unnumbered appeal, the appellants/claimants also filed a petition vide MACMAMP No.1943 of 2011 to condone the delay of 102 days in filing the appeal offering explanation for the delay as financial difficulties and the same is allowed directing the registry to number the appeal if otherwise in order and the appeal at request is taken up for hearing.

3.Heard the learned counsel for the appellants and also the learned counsel for the 2nd respondent/Insurer, from the 1st respondent-owner of the crime vehicle though contested before the tribunal impleaded in the appeal dismissed for default vide orders dated 12.03.2015, who contended that the tribunal is right in exonerating the insurer and there is nothing to interfere with the said

finding for this Court while sitting in appeal.

4. A perusal of the record, there is no dispute about the quantum. Now the issue involved is whether the exoneration of the Insurer from liability or to pay and recover in saying the driver of the auto possessing driving licence of LMV Non-transport in driving LMV transport. But the law is well settled by the Apex Court in three judge Bench in ***National Insurance Company Limited Vs. Swaran Singh***^[1] that once the policy covers 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, while confirming the quantum of compensation, the appeal is allowed in part by modifying the total exoneration of the 2nd respondent-Insurer to pay first and then recover from the 1st respondent directing both the respondents to 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 claimants (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. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 31.12.2015
Vvr

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