

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A No.2352 of 2009

JUDGMENT:

This appeal is filed challenging the order, dated 07.03.2008, in O.P.No.335 of 2006 on the file of Motor Accidents Claims Tribunal-cum-VI Additional District (Fast Track Court), Gooty.

2. Heard learned counsel for the appellant-respondent No.2 in O.P.No.335 of 2006 on the file of Motor Accidents Claims Tribunal-cum-VI Additional District Judge (Fast Track Court), Gooty and learned counsel for respondent No.7-respondent No.1, who is owner of DCM van, and also learned counsel for respondents 1 to 6-claimants 1 to 6 and perused the material on record.

3. The claimants, who are respondents 1 to 6, in the appeal filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 for the death of D.Venkata Ramulu in the accident on 20.04.2005 due to alleged rash and negligent driving of driver of DCM Van bearing No.AP-02-U-7126 of respondent No.1, undisputedly, insured with the appellant-respondent No.2 covered by Ex.B.3-insurance policy and the claim made is for Rs.3,00,000/-. As per Ex.A3-postmortem report, the deceased was aged about 50 years.

4. Among six claimants, claimant No.1 is wife and claimants 2 to 6 are sons of the deceased. The Tribunal, while accepting the contention of the appellant-insurer that the driver of the van of respondent No.1 is not having driving licence and even notice issued to the owner to produce the licence of the vehicle and even served covered by acknowledgment under Exs.B.1and B.2 to the driver, same was not produced (Ex.A.4 M.V.I report also substantiates the factum, apart from Ex.A.5 charge sheet, if any), however, held it is a case of pay and recover. Same is impugned in the present appeal by the insurer saying that the Tribunal committed a

grave error in ordering pay and recover, apart from quantum of compensation, is also to be reduced as exorbitant.

5. Heard at length the respective counsel and perused the material on record.

6. A perusal of the record shows that the quantum of compensation no way requires interference, but for no cross-objection if at all to enhance.

7. However, coming to the direction to pay and recover, for not holding valid driving licence to the driver of the vehicle, since the risk is covered by policy, here is nothing to exonerate the appellant-insurer, but for to pay and recover, as rightly done by the Tribunal and the law is well settled in this regard from the expressions of the Hon'ble Apex Court in ***National Insurance Company Limited Vs. Swaran Singh & Others*** and also the later expression in ***S.Iyyappan Vs. United India Insurance Company*** besides ***Kusum Lata vs. Satbir***.

8. Having regard to the above, while sitting in appeal for this Court there is nothing to interfere with the award of the Tribunal.

9. Accordingly, the appeal is disposed of with the following observation:

The respondents shall deposit amount as ordered by the Tribunal within one month, failing which the claimant 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 in bank 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 M.V 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. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

NOVEMBER 02, 2015

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HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

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Date: 02.11.2015

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