

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.2371 OF 2010

IN/AND

MACMA No.2568 OF 2015

ORDER:

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This appeal is filed challenging the order dated 02.12.2009 in O.P.No.148 of 2005 on the file of Motor Accidents Claims Tribunal-cum-I Additional District Judge, Khammam.

2. MACMA.M.P.No.2371 of 2010 is filed under Section 5 of the Limitation Act, 1963 to condone the delay of (36) days in filing the appeal.
3. Heard the learned counsel for the appellant/insurer. The 1st respondent is the claimant, who served in the appeal, failed to attend. The 2nd respondent to whom twice notices sent were returned, as left. It is a sufficient service for not a case of incorrect address but an unclaimed one. Thereby, taken as heard the 2nd respondent to the appeal (owner of vehicle who even remained exparte before the tribunal.
4. The appeal claim of insurer is against fixing the joint liability in the said O.P. in claiming the driver has no valid driving license and thereby the insurance company can be exonerated and owner alone to be made liable. For the reasons stated in the affidavit filed in support of the petition, Crl.MP.No.2371 of 2010 is allowed and the delay of 36 days in filing the appeal is condoned. Registry is directed to number the appeal if otherwise in order.
5. At request for notices served in the appeal as referred supra at request of the insurer the appeal is taken up for final hearing. The Tribunal even recorded the evidence on behalf of the 2nd respondent/insurer, through RWs.1 and 2 and exhibited as Ex.B2-driving license and Ex.X2-equivalent driving license extract from R.T.A. concerned, to say, the driver has no

valid driving license and even there is no rebuttal evidence against that, gravely erred in not discussing evidence of the passenger jeep light motor vehicle transport and the driver got only LMV non-transport, simply fixed joint liability. Thereby the award fixing joint liability is unsustainable and from the evidence when the driver has no valid driving license of light motor vehicle transport but only non-transport, the tribunal ought to have been directed for pay and recover, from the policy covering the risk.

6. Having regard to the above, the appeal is partly allowed by modifying the impugned order from joint liability to the liability of pay and recover vide ***Insurance Company Limited Vs. Swaran Singh & Others, S.Iyyappan Vs. United India Insurance Company and Kusum Lata ..vs. Satbir.***

7. Accordingly and in the result, while allowing the appeal in part with joint and several liability of the insurer and insured (respondents 1 and 2) to pay by the insurer to the claimants and then to recover from the insured. The 2nd respondent herein shall deposit 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. Lehu & Nanjappan** (supra) 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 respective claimants (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 amounts separately in fixed deposits in a nationalized bank. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

8. Miscellaneous petitions pending if any shall stand closed

c. miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:09-11-2015

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