HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.2729 of 2015

JUDGMENT:

This appeal is filed by the 2nd respondent—Insurer, having been aggrieved by the Order/Award of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-IX Additional District Judge (FTC) Guntur, (*for short, 'Tribunal')* passed in M.V.O.P.No.107 of 2008, dated 07.01.2010, granting compensation of Rs.70,000/- with interest at 8% per annum from the date of petition i.e., 29.01.2008 till the date of award and at 6% per annum from the date of award till the date of realization, out of claim of Rs.2,50,000/- in the claim petition filed under Section 163-A and 140 M.V Act, 1988.

2. Heard learned standing counsel for appellant/ respondent No.2. The 2nd respondent—owner of the auto even served failed to attend, It is very clear from the docket order dated 02.11.2015 and it is the submission of learned counsel for appellant that referring to ***Meka Chakra Rao vs Yelubandi Babu Rao***[1], where the owner and driver or any of them remained ex parte before the Tribunal, even in the appeal they intended to implead and even impleaded and unserved being unnecessary parties no way fatal to the maintainability of the appeal. Perused the material on record.

3. The Tribunal as per the appellant—insurer gravely erred in fixing liability for the driver has no valid driving licence that is being proved from the evidence of RW.1 besides Exs.B2 to B4. In fact, the Tribunal awarded interest at 8% per annum from the date of petition i.e., 29.01.2008 till the date of award and at 6% per annum from the date of award till the date of realization. So far as the rate of interest is concerned 7.5% per annum is reasonable as laid down by the Apex Court in ***Rajesh vs Rajbir Singh***[2] ***and*** apart from settled expression

in ***TN Transport vs Raja Priya*[3]*,*** the rate of interest is reduced from 8% per annum to 7.5% per annum. However, coming to the liability of the insurer for the driver claimed no valid driving license being owner of the auto LMV transport i.e., 1st respondent to the claim petition and 2nd respondent to the appeal is concerned, the Tribunal more particularly observed at para No.17 that as per the contents of charge sheet one Shaik Baji, S/o.Mastan, R/o.Phirangipuram Village is the driver of crime auto. Whereas coming to Ex.B4—Driving Licence extract reveals that one Shaik Baji, S/o.Mastan Ali, R/o.3-58, Keshavapatnam, Shankarapatnam, Karimnagar is having non transport driving licence for auto rikshaw, thereby it no way tallies much less to link the driving licence to claim petition 1st respondent—driver cum owner Shaik Baji, S/o.Mastan of Phiranginpuram. Even the notice said to have been issued to the owner-cum-driver was returned unserved and no further steps taken for causing service of notice, there is no proof as rightly observed by the Tribunal, that the insurer to be exonerated from the liability as the material falls short to say the driver has no valid driving licence. From perusal of the charge sheet the driver has got licence and none averments discloses the driver of the auto has no licence under the M.V Act.

4. Having regard to the above, for this Court while sitting in appeal there is nothing to interfere with the award of the Tribunal fixing joint liability against the owner and insurer of compensation at Rs.70,000/- payable to the claimant.

5. Accordingly, the appeal is partly allowed while confirming the joint liability but modifying the rate of interest from 8% per annum and 6% per annum to 7.5% per annum from the date of petition till the date of realisation. There is no order as to costs.

6. Consequently, miscellaneous petitions, if any pending in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

03.11.2015
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.2729 of 2015

Date: 03.11.2015

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[1] 2001 (1) ALT 495 DB

[2] 2013 ACJ 1403

[3] 2005 (6) SCC 236