HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.1599 of 2011

IN/AND

MACMA No.2695 OF 2015

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ORDER:

Impugning the findings of the IV Additional District Judge-cum-Motor Accidents Claims Tribunal, Kurnool, dated 02.12.2010 in O.P.No.788 of 2007 in awarding compensation of Rs.42,000/- with interest at 7.5% p.a. fixing joint liability on the 2nd respondent/insurer along with the

1st respondent/owner of auto bearing No.AP 21 X 5588, the insurer filed the appeal against the said claimant as

1st respondent and owner of auto as 2nd respondent.

2. The appeal against the 2nd respondent dismissed for default on 24.03.2015. However, the fact remains he remained exparte before the tribunal and there from it is the submission referring to **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma** that even not necessary party to the appeal and thereby impleaded no way fatal to the maintainability of the appeal from such dismissal for notice sent unserved for fresh notice not taken. The same is recorded. The 1st respondent/claimant remained exparte in the appeal vis-à-vis delay condonation application of 27 days. In the appeal notice served on the 1st respondent and 2nd respondent is not a necessary party, as recorded supra.

3. Heard.

4. It is at the request of appellant-insurer, while allowing the delay condonation application and directing the Registry to number the appeal if other wise in order, taken up the appeal for final hearing.

5. The trial Court held that the evidence of PW.1 with reference to Exs.A1 to A3 clearly established that she and her husband while proceeding on the

left side of the road, the auto coming from behind hit her, as a result of which she fell down and sustained injuries. The contention that she contributed to the accident from her composite negligence by proceeding in the middle of the road, as found by the Tribunal not borne by the material pleading much less evidence including to rebut the evidence of the claimants with reference to Exs.A1 to A3. Thus, so far as that finding of the tribunal of auto driver negligence caused the accident, no way requires interference.

6. Coming to the other finding of fixing joint liability instead of exonerating the insurer as claimed in the appeal concerned, undisputedly, the evidence on record with reference to Exs.B3 and B4, which are Form No.24 B.Register and driving license of the driver of the auto clearly speaks that the driver got L.M.V.-non transport whereas license required is L.M.V.-transport, the tribunal held referring to an expression of the Single Bench of this Court in **New India Assurance Company Limited, Tirupati, Vs. G.Sampoorna & Others,** discretion not chosen to exercise to exonerate the insurer by fixing joint liability. No doubt, the policy covered the risk. Merely because the driver got L.M.V.-non-transport license, the insurer cannot be exonerated but for pay and recover.

7. Having regard to the above, it is a fit case for pay and recovery vide ***Insurance Company Limited Vs. Swaran Singh & Others,*** **S.Iyyappan Vs. United India Insurance Company** and **Kusum Lata ..vs. Satbir.** The tribunal instead of ordering pay and recovery, fixed joint liability, thereby to that extent, the appeal is to be allowed from joint liability to the extent of pay and recovery.

8. Accordingly and in the result, while allowing the appeal in part with joint and several liability of the insurer and insured, to pay by the insurer to the claimant and then to recover from the insured. The insurer 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. Lehru and ***Oriental Insurance Company Limited Vs. Nanjappan & Others*** 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 Motor Vehicles 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 claimants, 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.

9. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:24-11-2015

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