HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA MP No.977 of 2012 in MA CMA No. 2629 of 2015 & M.A.C.M.A. No. 2629 of 2015

COMMON ORDER :

The un-numbered appeal is filed by the insurance company, 2nd respondent before the Tribunal, aggrieved by the order and decree in O.P. No.109 of 2009 on the file of Chairman, Motor Accident Claims Tribunal-cum-IX Additional District and Sessions Judge, Kamareddy with a petition to condone the delay of 150 days in filing the appeal.

2) The petitioner filed the claim petition claiming compensation of Rs.2,00,000/- and the Tribunal awarded Rs.1,53,000/- with interest at 7.5% p.a. against the owner of the auto trolley (1st respondent) bearing No.AP 15 X 5071 and the insurer who is the 2nd respondent-appellant herein. The Tribunal fixed joint liability against the owner and insurer by award dated 13.06.2011. The appellant now contesting that the Tribunal not considered the contention of the insurer that the driver not having valid driving licence. The driver name is N.Devayya (Naini). What the Tribunal find at page No.4, para No.7 of the Judgment is that there is a difference between N.Devayya and Naini Devayya. Though it clearly establishes that the driver is N.Devayya and the driving licence particulars are mentioning and father's name not even in dispute. Apart

from it, even notice to produce the driving licence to that are served and no licence produced and therefrom the employee of the R.T.A called for from besides examination of witnesses as R.Ws 1 and 2. In proof of the said fact covered by Ex.B-1 driving licence of only L.M.V non-transport, whereas the auto trolley licence required L.M.V Transport and Ex.B-2 and B-4 office copy of the legal notice and served copy of the legal notice. The owner even remained exparte before the Tribunal, impleaded in the appeal. The appeal filed is against the 1st respondent claimant to the appeal and the 2nd respondent-owner of the vehicle though remained exparte before the Tribunal, necessary party to the appeal as insurer is impugning the joint liability and seeking exoneration saying owner alone is liable. The owner even served, failed to attend.

3) Further, it is the submission by the learned counsel for the appellant that they are not impugning the quantum of compensation awarded to the claimant, but for fixing joint liability against the insurer instead to fix liability against the owner. Thus, the claimant is not a necessary party to the appeal vis-à-vis the petition to condone the delay in filing the appeal by virtue of the fact since recorded, dismissal of the appeal and the petition against the 1st respondent claimant to the appeal no way thereby comes in the way to the maintainability of the appeal.

4) The owner, at the cost of repetition, exparte as the 2nd respondent to the appeal, hence taken as heard. Heard the learned counsel for the appellant and 4th respondent insurer and perused the material on record.

5) The reasons assigned for the delay is in processing the file, the delay was administrative side in according sanction from the legal opinion, hence for that sufficient cause, delay condoned in filing the appeal by directing the Registry to number the appeal, if otherwise in order.

Since notice is already served in the appeal at request of the contesting parties taken up the same for final hearing, for the 1st respondent claimant is not necessary party to the appeal and 2nd respondent-vehicle owner since served failed to attend as discussed supra.

There is a clear evidence about the driver got no valid driving licence for driving the L.M.V Transport since possessed L.M.V non-transport possessed and owner even covered by Ex.B-2 and B-4 proved from the evidence of R.W-1 employee of the insurer, failed to respond by producing the original driving licence suffice to draw adverse inference, however even from Ex.B-1 driving licence and evidence of employee of R.T.O and of the insurer, it clearly speaks that the driver has no valid driving licence as it is L.M.V non-transport and required to possess L.M.V. transport.

6) Having regard to the above, the Tribunal gravely erred in fixing the joint liability instead of pay and recover on the insurer, for the insurer cannot be totally exonerated but for to pay and recover from owner of vehicle therefrom vide ***National Insurance Company Limited Vs. Swaran Singh & Others***[1], ***Kusumlatha and others V. Satbir and Others***[2] and ***S.Iyyappan Vs. United India Insurance Company***[3].

7) In the result, while allowing the appeal in part and while modifying, from joint and several liability of the insurer and insured, to the extent of pay by the insurer and then to recover from the vehicle owner. The respondents shall deposit said amount 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 MV 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 claimant, 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.

8) Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

17.11.2015
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[1] (2004) 3 SCC 297=2004-ACJ-1

[2] AIR 2011 SC 1234 = 2011 (2) SCJ 639

[3] (2013) 7 SCC 62