

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.493 of 2012 IN/AND

MACMA No.2730 OF 2015

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ORDER:

Impugning the injured claimant of accident dated 22.08.2009 claimed for Rs.2,00,000/- under Section 166 of the Motor Vehicles Act against driver, owner and insurer of the jeep bearing No.AP 02U 1791, near Bharath Petrol bunk at Anantapur, in the claim saying when he was proceeding as driver of the lorry with load there was a puncture of the tyre near petrol bunk at about 12.30 p.m.(in fact as can be seen it appears in the mid night as 0.30 hours not 12.30 p.m.), the tribunal awarded, joint liability fixing Rs.90,000/- with interest at 6% p.a. against the driver, owner and insurer, the three respondents by award dated 19.07.2011, of which the owner and driver remained exparte before the tribunal, the insurer preferred the appeal supra, with delay condonation of 61 days in contending that even from the own document Ex.A4 of the claimant regarding driving license of jeep driver possessed is LMV-non-transport from 2006 and there is imperfect driving license as contended by the insurer also through their employee-RW.1 and the tribunal having accepted the said evidence on record, wrongly came to the conclusion of fixing joint liability instead of pay and recovery liability.

2. Heard and perused the material on record.

3. The 1st respondent/claimant is lorry driver by avocation and 2nd respondent/driver of the jeep even served failed to attend. The 3rd respondent i.e., owner of the jeep, who remained *exparte* before the tribunal, no way necessary party to the appeal, even impleaded and dismissed for default not fatal to the appeal, as per the submission vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**^[1]. The same is recorded.

4. The reason assigned in the delay condonation application is the administrative delay in obtaining sanction by giving opinion and in filing the appeal.

5. It is at the request of both the parties, 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.

6. A reading of Section 9 of the Motor Vehicles Act is crystal clear of L.M.V. non-transport after obtaining and with minimum period of experience only eligible to get L.M.V.-transport and even not automatic after prescribed period but for eligibility to participate and even not granted with further right of participation after expiry of some time, to say the LMV-transport is different from LMV non-transport license. For the passenger jeep, the license required is LMV-transport. The law is very clear from imperfect license also the insurer however cannot be exonerated from liability but for to pay and recovery vide

Insurance Company Limited Vs. Swaran Singh & Others^[2], ***Kusum Lata ..vs. Satbir***^[3] and ***S.Iyyappan Vs. United India Insurance Company***^[4].

7. Having regard to the above, the finding of the tribunal of joint liability requires to be modified to the extent of liability 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 from the date of receipt of a copy of this order, 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***^[5] and ***Oriental Insurance Company Limited Vs. Nanjappan & Others***^[6] 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:07-12-2015

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[\[1\]](#) **(2001 (1) ALT 495)**

[\[2\]](#) (2004) 3 SCC 297=2004-ACJ-1

[\[3\]](#) AIR 2011 SC 1234

[\[4\]](#) (2013) 7 SCC 62

[\[5\]](#) JT-2003(2) SC 595 = 2003 ACJ 611

[\[6\]](#) (2004) 13 SCC 224=2004-SAR(civil)-290