HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.2722 of 2015

ORDER :

The un-numbered appeal is filed by the injured claimant(since major vide order today in MACMA MP No.3503 of 2011, with application to condone the 113 days delay in representation of the appeal, aggrieved by the order and decree dated 30.11.2010 in O.P. No.1088 of 2009 on the file of Chairman, Motor Accident Claims Tribunal-cum-IX Additional District and Sessions Judge, (F.T.C.), Guntur.

2. The 1st respondent is owner of auto bearing No.AP 24V 8327 and the 2nd respondent is the insurer. The owner remained exparte before the tribunal, even impleaded in the appeal dismissed for default for not taking fresh notice despite order dated 27.02.2015 and it is not a bar to the maintainability of the appeal as she is not a necessary party, vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**[1]**.**

3. Heard counsel for the claimant/appellant and insurer/2nd respondent in the appeal and perused the material on record. The delay in representation is allowed.

4. The trial Court fixed the liability of Rs.27,000/- out of claim of Rs.1,75,000/- under Section 163-A of the Motor Vehicles Act for fracture of medial melleolus of right leg with fracture of shaft of right femur, however exonerated the insurer from liability saying even notices issued to the driver and owner to produce the driving license covered by Exs.B1 to B3 and even summoned the

driver, who deposed as RW.1 admitted that he was having only Learner's License of light motor vehicle that obtained in the year 2007 and the same lost by him, thereby he could not produce before the police in showing for the offence of not possessing license and he did not renew the same. It is from the said evidence vis-à-vis the evidence of employee of the insurer/RW.2, the tribunal exonerated the insurer from liability in saying a person having Learner's License is not entitled to drive the passenger auto. In fact, the Apex Court in ***National Insurance Company Limited Vs. Swaran Singh & Others***[2] held that a Learner's License is a valid license. However, the accident was dated 11.08.2009. Even, the driver did not produce license, which is allegedly obtained in the year 2007 as it was issued for a shorter period and later he has to obtain regular license and it is not his case that the license is bearing a particular number that was given and is valid. Even there from though, it can be said that he has no valid driving license, the insurer could not have been totally exonerated for nothing showing owner deliberately and consciously allowed with no license by the driver to drive the auto. The law is fairly settled from **Swaran Singh** (Supra) besides ***Kusumlatha and others V. Satbir***[3] and ***S.Iyyappan Vs. United India Insurance Company***[4].

5) Though it is one of the contentions that the insurer from counter that was given credence by the tribunal of there is no policy coverage, the insurer did not produce the policy even particulars of the policy mentioned in the cause title of the claim petition at the array of the 2nd respondent-insurer, when it is the burden of the insurer to show the policy particulars not related to

the vehicle nor issued from the insurance company. Hence, that contention is also not properly appreciated by the tribunal.

6) Now coming to the quantum what is awarded by the tribunal is low concerned, from nature of injuries the compensation is enhanced from Rs.27,000/- to Rs.40,000/- with pay and recovery liability of the insurer.

7) Accordingly and in the result, while allowing the appeal in part to the extent of enhancing compensation from Rs.27,000/- to Rs.40,000/- to pay by the insurer and then to recover from the vehicle owner with interest at 7.5% p.a. The respondents shall deposit said amount within one month of receipt of a copy of this order , 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 balance 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, if any execution application with attachment sought while depositing. 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

Date: 18.11.2015
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[1] **2001 (1) ALT 495**

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

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

[4] (2013) 7 SCC 62