

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.5576 OF 2012

IN/AND

MACMA No.2589 OF 2015

-

ORDER:

This appeal is filed challenging the order dated 07.02.2012 in O.P.No.58 of 2010 on the file of Motor Accidents Claims Tribunal-cum-II Additional District Judge, Madanapalle.

2. MACMA.M.P.No.5576 of 2012 is filed under Section 5 of the Limitation Act, 1963 to condone the delay of (83) days in filing the appeal.
3. Heard and perused the material on record.
4. Though the 1st respondent, owner of auto remained exparte before the tribunal and not necessary party to the appeal and of any impact on the maintainability of appeal vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**, even in the appeal impleaded and dismissed for default on 16.03.2015 and the same is recorded.
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. The claim petition was filed by the claimant/appellant under Section 166 of the Motor Vehicles Act for compensation of Rs.1,00,000/- for the injuries sustained by him on 25.06.2009, where under he sustained fracture to left arm and also two other simple injuries. Ex.A2 is the wound certificate and he examined PW.2, doctor who was not the doctor that treated but subsequently observed, in speaking on disability under Ex.A5 that was not believed by the tribunal. However, the tribunal, from the evidence of RWs.1 and 2 with reference to Ex.B2, driving license extract of driver not having valid driving license to say L.M.V.-transport required for the auto

but only got L.M.V.-Non-transport, totally exonerated the insurer.

7. It is impugning the same viz., exoneration of insurer from liability and quantum of compensation awarded only of Rs.45,400/- with interest at 9% p.a. as utterly low, the present appeal is filed by the claimant, with a delay of 83 days.
8. Coming to the quantum of compensation, Ex.A2-wound certificate itself is clear that one fracture with two simple injuries of what the tribunal awarded of Rs.45,400/- is no way a lesser compensation and no way requires interference. On the other hand, insurer contested that interest awarded by the tribunal at 9% is excessive and to reduce the same within the discretion power of the Court.
9. Coming to the exoneration of the insurer is concerned, as per the evidence on record, the driver got LMV non-transport for not possessed LMV-transport, the tribunal is not right in totally exonerating the insurer but for pay and recover and the policy covers the risk vide ***Insurance Company Limited Vs. Swaran Singh & Others, S.Iyyappan Vs. United India Insurance Company*** and ***Kusum Lata vs. Satbir***.
10. Having regard to the above, the appeal is partly allowed from exoneration of the insurer by setting aside the exoneration of the 2nd respondent and by fixing joint liability against the insurer to indemnify the owner to the extent of pay and recovery.
11. 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 claimants 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. Lehu & Nanjappan*** 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 MV 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 claimant, 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.

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

Dr. B. SIVA SANKARA RAO, J

Date:12-11-2015

pab