HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA MP No.949 of 2010 in MACMA No.2891 of 2015 & MACMA No. 2891 of 2015

COMMON ORDER :

The un-numbered appeal is preferred by the appellant-claimant against the order in M.V.O.P. No.162 of 2006 on the file of Chairman-cum-IV Additional District Judge, Guntur at Tenali with a petition to condone the delay of 377 days in preferring the appeal.

2) Heard the learned counsel for the appellant and also the 2nd respondent insurance company represented by Smt.I.Maamu Vani Advocate. The appeal against the 1st respondent, owner of the auto, is dismissed for default on 27.02.2015, since remained exparte before the Tribunal, not a necessary party and that no way fatal to the maintainability of appeal vide **Meka Chakra Rao v. Yelubandi Baburao**[1]. The cause of delay has been explained that due to financial difficulties and poverty could not file the appeal within time and the same has been considered subject to condition of not entitled the interest on the enhanced compensation, if any. At request of both parties, while directing the Registry to number the appeal if otherwise in order, the main appeal is heard and perused the material on record.

3) So far as the award of the Tribunal impugning of exonerating the 2nd respondent insurer concerned, though

Ex.B-1 is the policy of the vehicle in question, is a goods trolley auto and not a passenger auto and the seating capacity and the policy risk covered is for driver and another person is owner or attendant of goods that is otherwise statutorily covered under Section 147 of the M.V.Act. However, the petitioner is not claimed as owner of the goods, but for passenger to say not authorized being unauthorized and further once there is nothing to show any contractual liability undertaken by the insurer from Ex.B-1 policy to cover the risk of any passenger in the goods auto, besides no such obligation for the insurer as held by the Apex Court in ***New India Assurance Company Limited V. Asha Rani***[2] is very clear reiterated in ***Oriental Insurance Company Limited V. Devireddy Konda Reddy***[3], **National Insurance Company Limited Vs. Bommithi Subbhayamma & Others**[4], ***National Insurance Company Limited V. Prem Bhai Patel***[5], and ***National insurance Company V. Cholleti Bharatamma***[6] apart from the latest expression leaving the entire case law in ***Sanjiv Kumar Samrat V. National Insurance Co. Ltd.***[7], thereby the Tribunal is right in saying the insurer is not liable to indemnify for the injuries sustained by the claimant for the policy not covered the risk.

4) Now, coming to the other contention regarding the quantum of compensation of Rs.25,000/- is utterly low concerned, there is a fracture sustained, undisputedly as

observed by the Tribunal, to the left ankle. Having regard to the above for the said fracture, compensation of Rs.25,000/- to the injured claimant is entitled besides medical expenses even no documents filed regarding the medical expenses Exs.A-3 to A-5 O.P. chits, X-ray and wound certificate reveals the fracture, besides transport charges, attendant charges, extra nourishment and loss of earnings even awarded Rs.15,000/- i.e., Rs.40,000/- to enhance from Rs.25,000/-.

5) Accordingly, in the result, the appeal is partly allowed while confirming the finding of the Tribunal in exonerating the insurer for any liability to indemnify, by enhancing the compensation of the claim to be satisfied by the 1st respondent from Rs.25,000/- to Rs.40,000/-. However, on the enhanced amount, the liability to pay interest at 7.5% p.a. from today besides the liability of interest on original amount from the date of claim petition. There is no order as to costs in the appeal.

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

Dr. B. SIVA SANKARA RAO, J

29.12.2015
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[1] 2001(1)ALT 495 DB

[2] 2002(8) Supreme 594

[3] 2003(1) Supreme 732

[4] 2005 (4) ACJ 721

[5] (2005)6 SCC 172

[6] 2008 ACJ 268 (SC)

[7] 2013 ACJ 1