HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.1174 OF 2010 IN/AND
MACMA No.2786 of 2015

ORDER :

This appeal is filed challenging the order dated 24.08.2009 in M.V.O.P.No.712 of 2006 on the file of Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Kadapa, with a delay of 33 days.

2. Heard and perused the material on record.

3. Though the 1st respondent/claimant served, failed to attend. Proof of service filed for the 2nd respondent and recorded of 'addressee left'. The earlier endorsement is also the same and it is not a case of address is not correct and the address shows in pursuance to the lower Court, thereby notice to the 2nd respondent, owner of the auto is held sufficient and called absent and set exparte. The 3rd respondent is endorsed as not a necessary party. The same is recorded.

4. The reasons assigned in the affidavit filed in support of the petition are that delay of processing with legal opinion for filing appeal and obtaining sanction and entrusting to the advocate. Hence, the delay is condoned and the appeal is taken up for hearing as 1st respondent claimant served, 2nd respondent as referred supra notice even unclaimed returned back and 3rd respondent endorsed as not a necessary party.

5. The only tenable contention in the grounds of appeal is that the passenger auto is a LMV-transport vehicle whereas the driver got LMV-non transport, as per Ex.B1-C.C. of

driving license extract.

6. Section 9 of the Motor Vehicles Act clearly speaks getting of LMV-transport is not automatic from non-transport license but for after expiry of prescribed period of experience and also after conducting test and for any failure again by re-conducting of test. Thus, when the driver has no valid driving license for the passenger or transport light motor vehicle but only possessed LMV-non transport, the insurer is liable only to the extent of pay and recovery and cannot be exonerated in toto and the tribunal gravely erred in observing the contra.

7. Hence, the appeal is partly allowed by modifying the liability covered by the award of Rs.52,000/- with interest at 7.5% p.a. only from joint liability to the extent of liability of pay and recover with the following pay and recovery directions:

> The insurer has to pay to the claimant and then to recover from the insured. The insurer shall deposit the 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. Lehru**[1] & ***Oriental Insurance Company Limited Vs. Nanjappan***[2] 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 claimant (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.

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

Dr. B. SIVA SANKARA RAO, J

Date:09-12-2015
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[1] JT-2003(2) SC 595 = 2003 ACJ 611

[2] (2004) 13 SCC 224=2004-SAR(civil)-290