

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA MP No.2092 OF 2011

IN/AND

MACMA No.2910 OF 2015

JUDGMENT:

The appellant is the claimant in O.P. No.332 of 2005 filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by him in a motor vehicle accident that occurred on 17.06.2007 while he was proceeding along with his wife and daughter in an auto bearing No.AP-15-X-6964, one lorry bearing No.AP-15-W-1355 of the first respondent insured with the 2nd respondent dashed the auto for which the auto turned turtle, and he sustained injuries and his daughter died in the accident covered by another claim in O.P. No.516 of 2007 and from the contest by respondents, the Chairman, Motor Accidents Claims Tribunal – cum- I Additional District Judge, Karimnagar, (for short, 'the Tribunal') exonerated the liability of insurer from liability saying the driver was not having valid driving licence while arriving an amount of Rs.27,500/- with interest @ 7.5% per annum vide award dated 31.07.2009 fixing the liability against the owner and impugning the same, the present appeal is filed.

02. Notice was sent to the first respondent after restoration of the earlier dismissal order for not taking steps and the India Post track record online shows that notice served on 10.12.2015. The first respondent failed to attend, hence, taken as heard. No doubt, the owner and insurer are on record. Heard and the 175 days delay condoned and the MACMA MP No.2092 of 2011 is allowed, subject to the condition of not entitled to interest on any enhanced amount but from today.

03. Heard learned counsel for the appellant/ claimant and the insurer. The observation of the Tribunal so far as exoneration of the liability of the insurer is concerned there is undisputedly a policy of insurance covered by Ex.B.1. Even from the evidence of employee of the second respondent as R.W.1 to say the driver of the lorry has no valid driving licence on the date of accident dated 17.06.2007. whereas the learned counsel for the appellant

claimant contended that in Form No.54 it was mentioned the licence number 16401/WGRL/94 dated 19.03.2009 and as such it cannot be said that he has no valid driving licence for not filing the driving licence extract by the claimants. The owner of the lorry undisputedly remained *ex parte*.

4. In fact, as per the Exs.B.2 and B.3, Order and Decree in O.P. No.516 of 2007 dated 25.11.2008, the imperfect licence is there and thus there is no basis for the Tribunal to exonerate the insurer from liability totally but for to pay and recover as held in MACMA No.2781 of 2015 out come of the said award and decree against O.P. No.516 of 2007 supra, relying upon the expression of the Apex Court in **United India Insurance Company Limited v. Lehu**^[1], **Oriental Insurance Company Limited v. Nanjappan**^[2], **National Insurance Company Limited v. Swaran Singh**^[3], **Kusumlatha v. Satbir**^[4] and **S. Iyyappan v. United India Insurance Company Limited**^[5].

05. Now coming to the quantum of compensation for the injuries laceration on the fore head, left palm and abrasion on the penis including for medical expenses and treatment, loss of earnings, pain and suffering, what the Tribunal awarded Rs.27,500/-, requires enhancement to Rs.32,000/-.

06. Accordingly and in the result, the appeal is partly allowed by setting aside the award of exoneration of insurer and by enhancing the compensation to Rs.32,000/- with interest at 7.5% per annum entitled from today, while fixing the liability on the insurer to the extent of pay and recovery with the following directions. The respondents shall deposit the said amount within one month, failing which the claimants 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 the 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 claimants (but for to invest in a bank) till such attachment order is made. However, after the same, the Tribunal shall not withhold the amount of the claimants, 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.

07. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

B. SIVA SANKARA RAO, J

11.12.2015

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[\[1\]](#) 2003 ACJ 611

[\[2\]](#) 2004(13) SCC 224

[\[3\]](#) 2004(3) SCC 297

[\[4\]](#) AIR 2011 SC 1234

[\[5\]](#) 2013(7) SCC 62