

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.5315 OF 2012

IN/AND

MACMA No.2692 OF 2015

ORDER:

The claimants five in number, for death of their father of whom claimants 1 and 2 are major sons, maintained the claim under Section 163-A of the Act for Rs.4 lakhs against owner and insurer of the auto bearing No.AP07TU 721- in O.P.No.1236 of 2009 on the file of Motor Accidents Claims Tribunal-cum-VI Additional District Judge Guntur.

2. The tribunal by award dated 29.07.2011 under Section 163-A of the Act arrived the compensation of Rs.1,53,500/- with interest granted from date of petition @ 7.5% p.a. However, the tribunal exonerated the insurer from the liability mainly on the ground that driver has no effective license to drive the passenger auto as possessed only LMV-non transport and not having LMV transport and placed reliance on the evidence of RW.1, insurer RW2, employee of RTA with reference to Ex.A2, charge sheet and Ex.B2, extract of driving license, Ex.B4, M.V.I.Report, Ex.X2, extract of permit and Ex.X3, extract of driving license. The trial Court having believed the evidence, totally exonerated the insurer in stead of pay and recovery i.e., the main contention of the claimants it is in filing the appeal with delay of 300 days and the reason assigned for the delay is lack of funds.
3. Heard. 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 from such dismissal and remained exparte before the Tribunal and the same is fortified by the expression of this Court in **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**, the same is recorded. Perused the material on record.

4. 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.
5. Once there is a policy covering the risk apart from the driver got LMV non transport or LMV transport is not a grant of total exoneration of the insurer but for pay and recovery, in fact, once there is a policy covered the risk as per ***Insurance Company Limited Vs. Swaran Singh & Others, S.Iyyappan Vs. United India Insurance Company*** and ***Kusum Lata ..vs. Satbir***, the insurer has to pay and recover and that it is not a case of no policy. Accordingly, the finding of the tribunal exonerating the insurer of the auto from liability is to be set aside by fixing liability to the extent of pay and recover.
6. 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 claimant 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*** and ***Oriental Insurance Company Limited Vs. Nanjappan & Others*** 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 Motor Vehicles 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 claimants, 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.

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

Dr. B. SIVA SANKARA RAO, J

Date:20-11-2015

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