

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.4128 OF 2012

IN/AND

MACMA No.2581 OF 2015

-

ORDER:

This appeal is filed challenging the order dated 06.06.2011 in O.P.No.456 of 2008 on the file of Motor Accidents Claims Tribunal-cum-Special Sessions Judge for the trial of S.Cs/S.Ts (POA) Cases-cum-Additional District Judge, Nalgonda.

2. MACMA.M.P.No.4128 of 2012 is filed under Section 5 of the Limitation Act, 1963 to condone the delay of (272) days in filing the appeal.
3. Heard.
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 the delay is ordeal caused and the 2nd respondent to the appeal as well as the petition, no other than owner of the vehicle, who remained exparte before the Tribunal, as can be seen from the impugned award and there from, it is the submission by the learned counsel for the insurer that owner is no way necessary to the appeal and even dismissed for default for non-taking of steps for fresh notice on earlier unserved vide dismissal order dated 03.03.2015 it no way fatal to the appeal and to that extent the submission with reference to the expression of **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma** recorded and from the submission by both sides the delay is condoned and the

appeal is taken for hearing at request and perused the material on record.

5. The core contention of the insurer in maintaining the appeal among the five grounds are covered by ground Nos. 2 and 3 of driver not having valid driving licence and hence the insurer cannot be made liable and the trial Court erred in fixing joint liability. The other one is saying compensation is excessive.
6. Coming to the compensation, under Section 166 of the Motor Vehicles Act, Rs.50,000/- claimed in O.P.No.456 of 2008 from which the trial Court awarded Rs.49,500/- for the injuries sustained as per Ex.A2, wound certificate and treated as in-patient in Kamala Nehru Hospital and later at Jayaram Orthopaedic Hospital, Miryalguda covered by Exs.A4 to A6 and the medical reports shown incurred as per Ex.A7 was Rs.16,600/- as the injuries sustained are fracture to the left radius besides other simple injuries including left fore arm, also for extra nourishment, attendant charges, transport charges and loss of earnings, is no way found excessive.
7. Coming to the liability of the insurer in seeking to exonerate from the very counter, the pleas no doubt taken are there is violation of the policy conditions to say policy not dispute and the so called violation is driver not having valid driving license and the accident was not intimated. Once policy covered risk, insurer cannot exonerate from liability for any violation of the permit or policy conditions is the settled law atleast from ***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 inability also but for light motor vehicle, non-transport and the tractor-trailor is a light motor vehicle and permit is not filed to say whether it is for exclusively agricultural purpose or for any commercial purpose and even taken for commercial purpose from not possessing LMV-Transport, the insurer cannot avoid liability merely because he is the driver-cum-owner of the tractor-trailor so far as the liability to the third party to the claimant concerned but for to pay and recover as from the very Ex.A3-charge sheet exhibited by the claimant itself speaks the driver has no valid license for the insurer to rely on it even no more evidence adduced once PW.1 was suggested to that effect and this conclusion is fortified by the expression of the Apex Court in **N.I.C. v. Rattani** reiterated in **N.I.C. v. Savitri Devi**. Accordingly, the finding of the Tribunal ignoring the insurer of the tractor-trailor from liability is set aside by fixing liability of pay and recover.

8. Accordingly, this appeal is disposed of.

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

Dr. B. SIVA SANKARA RAO, J

Date:07-11-2015

pab