HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.3189 OF 2012
IN/AND
MACMA No.2710 OF 2015

ORDER:

The claimant is the appellant. The 1st respondent is owner of the auto bearing No.AP03W4234 and the 2nd respondent is the insurer of the auto and the policy is in force is not in dispute. The claim is made under Section 166 of the Motor Vehicles Act for Rs.5 lakhs in O.P.No.211 of 2009. The tribunal after recording the evidence and after enquiry by discussing the evidence came to the conclusion of entitlement to the compensation, for the injuries sustained by the claimant of Rs.1,94,218/- that was awarded with interest at 6% p.a. vide award dated 19.09.2011. It is impugning the same and exonerating the insurer/2nd respondent, the claimant preferred the appeal, with a delay of 151 days.

2. The 1st respondent, owner of the auto, who was exparte before the tribunal even impleaded in the appeal and dismissed for default is not a necessary party to the appeal vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**[1] and the same is recorded.

3. For the reasons stated in the affidavit filed in support of the petition, the delay is condoned.

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. The main contention is exonerating the insurer from liability. The finding is that the driver got LMV-transport and the auto is a passenger auto, LMV-Non-transport, in exonerating the insurer totally. As per National ***Insurance Company Limited Vs. Swaran Singh & Others***[2]**,** **S.Iyyappan Vs. United India Insurance Company**[3] and **Kusum Lata ..vs. Satbir**[4], the insurer has to pay and recover.

6. Accordingly and in the result, the appeal is allowed 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. Lehru**[5] and ***Oriental Insurance Company Limited Vs. Nanjappan & Others***[6] 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:19-11-2015
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[1] **2001 (1) ALT 495**

[2] (2004) 3 SCC 297=2004-ACJ-1

[3] (2013) 7 SCC 62

[4] AIR 2011 SC 1234

[5] JT-2003(2) SC 595 = 2003 ACJ 611

[6] (2004) 13 SCC 224=2004-SAR(civil)-290