

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.M.P.No.155 of 2010

IN/AND

M.A.C.M.A.No.2913 of 2015

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COMMON ORDER :

The 2nd respondent-insurer among the two respondents including the owner and insurer of lorry bearing No.AP 07 W 1859 of the claim filed by the two claimants, no other than the husband and major son of the deceased G.Jalamma, aged about 60 years, a coolie, under Section 163-A of the Motor Vehicles Act for Rs.1,00,000/-, since awarded an amount of Rs.67,000/- with 8% per annum by the Motor Vehicle Accidents Claims Tribunal (VIII ADJ), Guntur (for short, 'the Tribunal') in O.P.No.101 of 2008 in favour of the 2nd claimant as the 1st claimant died pending the O.P., vide award dated 03.08.2009. Impugning the same, Insurance Company maintained the appeal with a delay of 53 days with explanation of administrative delay in forwarding and sanctioning.

2. The contentions of the appellants-2nd respondent in the grounds of appeal vis-à-vis oral submissions are that the driver got licence only light motor vehicle non-transport and there is no valid licence to drive the transport lorry and Ex.A.5-charge sheet filed by the police speaks the same way that the driver is an accused for the offence as he was not possessing the valid licence and the interest of 8% per annum is excessive and thereby to set aside the award and to exonerate the insurer.

3. Whereas it is the contention of the learned counsel for the claimant i.e., respondent No.2 in the appeal (since respondent No.1-claimant No.1 died pending O.P.) that respondent No.3 to the appeal-respondent No.1 in the claim petition appeared in person even

dismissed for default in the appeal, who is the main contestant later remained ex parte, which can be seen from the award of the Tribunal at para 3, even impleaded and dismissed for default in the appeal, no way fatal to the maintainability of the appeal as laid down in **M.Chakradhara Rao v. Y. Babu Rao**.

4. Heard and perused the material on record. The delay is condoned. At the request of both sides, the matter is taken up for hearing.

5. So far as the joint liability of the insurer fixed by the Tribunal is concerned, the evidence on record clearly speaks of including that of RW.1 with reference to Ex.A.4-Motor Vehicle Inspector's report and Ex.A.5-charge sheet, the driver got licence only LMV non-transport, whereas the vehicle involved is heavy goods vehicle and suffice to say no valid licence and what the Tribunal observed in para 8 of the award is Column No.17 of the M.V.I. report speaks the driver possessed LMV only and did not say beyond it. Such conclusion of the Tribunal is untenable when the vehicle involved is undisputedly a transport vehicle and the licence possessed by the driver is LMV non-transport. Thus, the Tribunal ought to have been awarded the compensation against the insurer to the extent of liability and beyond that so far as the quantum and rate of interest for this Court while sitting in appeal there is nothing to interfere.

6. In the result, the appeal is partly allowed by modifying the joint liability against the 2nd respondent-insurer to liability of pay and recover and respondent No.2 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 (supra) & Nanjappan (supra)** that the insurer is entitled, while depositing the amount payable, if not deposited or paid any amount so far to deposit the balance due and 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 claimant (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 claimant, 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.

7. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

31st December 2015.

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