

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. M.P.No.559 OF 2009

IN/ AND

M.A.C.M.A. No.2917 OF 2015

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JUDGMENT:

The injured claimant preferred the appeal along with an application to condone the delay of 46 days in filing the appeal, impugning the award passed on 18.06.2008 in O.P. No.303 of 2003 on the file of Motor Accidents Claims Tribunal (VIII Additional District Judge) Nizamabad (for short 'the Tribunal'), maintained by him against the owner of TATA Sumo bearing No.AP 13 C 2596 and its insurer under Section 166 of the M.V Act for Rs.1,50,000/-, whereas the Tribunal after full dressed trial from the evidence on record and from the evidence of PWs.1 and 2 and RW.1 and Exs.A1 to A16 and Ex.B1 and B2 and Ex.C1 and C2 respectively fixing liability of Rs.10,000/- with interest at 7.5% per annum against owner of TATA Sumo by exonerating the insurer and it is impugning the exoneration of the insurer and quantum of compensation awarded by the Tribunal is utterly low, the present appeal is maintained.

2) Heard learned counsel for the appellant. Respondent No.1 owner of the vehicle remained exparte before the Tribunal and even impleaded in the appeal dismissed for default vide order dated 01.02.2011 and the same is no way fatal to the maintainability of the appeal vide ***Meka Chakra Rao vs Y.Babu Rao***^[1] and the same is recorded.

3) The delay of 46 days in filing the appeal is condoned. At request of both the parties, the appeal is taken up for hearing. Heard and perused the material on record.

4) It is the contention of the learned counsel for appellant that exoneration of the insurer despite the policy covered risk of nine passengers who travelled in the vehicle, on the premium collected

being a standard package policy is unsustainable, thereby the insurer is liable to indemnify for the accident and injuries sustained by claimant from the policy covered the risk.

5) Whereas it is the contention of the learned counsel for insurer that the policy issued is for private utilization and not for commercial purpose, there are several persons travelling in the vehicle including the injured who could not even give the name of the owner of the vehicle and alleged purpose for which they were travelling for purchase of TVs that itself indicates for commercial purpose as fare paid passengers, which is contrary to the issue and policy conditions thereby otherwise the Tribunal is correct in exonerating the insurer, once even policy covers the risk there is violation of the policy conditions and permit the insurer cannot be made liable and if at all at best to pay and recover, hence to dismiss the appeal otherwise to order pay and recovery.

6) The permit of the vehicle not exhibited much less by examination of the any employee of the RTA concerned to know whether it is commercial permit or personal use or private use permit that is the criteria herein. Merely because the injured claimant stated that he could not know the name of the owner, it is difficult to say he was a fare paid passenger or the vehicle is in commercial use merely because they went to purchase TV. When such is the inference cannot be drawn the Tribunal is wrong in exonerating the insurer instead of fixing joint liability and it is not even a case of proved violation of permit to say pay and recovery.

7) Having regard to the above, the award of the Tribunal exonerating the insurer is unsustainable and set-aside and the appeal is allowed by fixing joint liability against the insurer also to indemnify the insured.

8) Now coming to the quantum of compensation, the amount of Rs.10,000/- awarded by the Tribunal is enhanced to Rs.15,000/- including the medical expenses, treatment and transport charges, extra nourishment and pain and sufferance.

9) Accordingly and in the result, M.A.C.M.A. M.P. No.559 of 2009 is ordered and the appeal is partly allowed, enhancing the compensation from Rs.10,000/- to Rs.15,000/- by fixing joint liability against respondents 1 and 2, with interest at 7.5% per annum from the date of petition till the date of realization. Rest of the terms of the award holds good. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:29-12-2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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