HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.6492 of 2009
IN/AND
M.A.C.M.A.No.2904 of 2015

ORDER:

The 2nd respondent among two respondents including owner and insurer of T.V.S. bike engine No.AF.JN.61742539 undisputedly covered by policy, in the claim filed by the injured under Section 163-A of the Motor Vehicles Act (for short 'the Act') for Rs.2,00,000/- in O.P.No.1049 of 2007 vide award dated 19.03.2009 fixed compensation of Rs.64,000/- with 20% permanent disability sustained by the injured with interest at 7.5% pa. by fixing joint liability, despite the bike is with four riding including the rider and the three pillion riders filed the appeal with contentions in the grounds of appeal that the tribunal gravely erred in fixing liability instead of exonerating the insurer despite driver has no valid driving license apart from compensation fixed is excessive and in the course of oral hearing the learned counsel for the insurer/appellant submits that the four riding itself contributed to the accident and the injured also thereby party to the contribution and proportionate contribution to be fixed to deduct.

2. The said un-numbered appeal is filed with a

delay of 138 days and the reason assigned in the application for condonation of delay is administrative delay in giving opinion and forwarding papers and according sanction to file.

3. Whereas, it is the contention of the learned counsel for the 1st respondent that the appeal against 2nd respondent even dismissed for default since remained exparte before the tribunal, no way fatal to the maintainability of the appeal vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**[1] and the same is recorded; and further contends that there is no explanation for the delay to condone and there are no merits to interfere with the award of the tribunal, hence to dismiss the appeal as well as delay condonation application.

4. Heard and perused the material on record. The reasons assigned for the delay justifies within the pragmatic approach, delay is condoned.

5. The appeal is taken up for hearing at request of both the parties.

6. The evidence of RW.1, Police Officer coupled with Exs.X1 and X2 and Ex.A2, charge sheet clearly speaks from the investigation of the case, the driver of

the bike of

1st respondent had no valid license at all and the Case Diary clearly discloses the same apart from the same the charge sheet also charged for the offence under Section 181 of the Act for not possessing license and even the Motor Vehicles Inspector's report not filed by the claimants to say there is any license muchless produced to say there from driver had no valid driving license to ride the bike. Once such is the case the insurer cannot be fixed with joint liability but for to pay and recover from the settled expressions in ***Insurance Company Limited v. Swaran Singh***[2]***,*** **Kusum Lata v. Satbir**[3] and **S.Iyyappan v. United India Insurance Company**[4]**,** thereby the tribunal has no right in fixing joint liability.

7. Coming to the contentions of quantum of compensation as utterly low and four riding contributed to the accident and contribution of the injured to be deducted, even tribunal taken 20% disability what the compensation awarded of Rs.64,000/- even by fixing any 25% contribution on the part of the injured, the claimant is entitled to more than what Rs.64,000/- awarded by the tribunal. Hence, there is nothing to interfere with the quantum.

8. Having regard to the above, the finding of the tribunal of joint liability requires to be modified to the extent of liability of pay and recovery.

9. 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 from the date of receipt of a copy of this order, 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.

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

Dr. B. SIVA SANKARA RAO, J

Date:31-12-2015
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[1] **(2001 (1) ALT 495)**

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

[3] AIR 2011 SC 1234

[4] (2013) 7 SCC 62

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

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