HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.1757 OF 2011
IN/AND
MACMA No.2728 OF 2015

ORDER:

The 2nd respondent/insurer of O.P.No.606 of 2008 on the file of Motor Accidents Claims Tribunal-cum-IV Additional District Judge (Fast Track Court), Anantapur, is the appellant of the un-numbered appeal and also the petition to condone the delay of (6) days in filing the appeal.

2. The said claim was maintained by the injured claimant under Section 166 of the Motor Vehicles Act for Rs.30,000/-, against owner and insurer of the auto bearing No.AP 37 W 2261, who are respondents 1 and 2 as well as respondents 3 and 4, who are owner and insurer of Tata Indica Car bearing No.KA 01 AB 459. The claim was allowed in part for Rs.10,000/- with interest at 7.5% p.a. vide award dated 10.12.2010 only against the owner and insurer of auto by exonerating the owner and insurer of car/respondents 3 and 4 of claim petition. It is impugning the same, the 2nd respondent, insurer of auto, maintained the appeal with a delay of six days. The delay is caused due to the administrative reasons.

3. The owner and insurer of car are no way necessary parties, as remained exparte before the tribunal even impleaded and dismissed for default, it has no bearing on maintainability of the appeal and delay condonation application vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma[1].** The same is recorded.

4. For the reasons stated in the affidavit filed in support of the petition, the delay of six days in filing the appeal is condoned.

5. 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.

6. The tribunal categorically held that from FIR and charge sheet not only filed against the auto driver for no fault of the car driver including from the investigation the injured PW1 also deposed and there is no other evidence but for the evidence of the employees of the insurers as RWs.1 and 2 at best in contra and merely because two vehicles are involved by discussing with legal position need not be fastened the liability in all cases against both vehicles. The Apex Court in **Jiju Kuruvila and others v. Kunjujamma Mohan[2],** held the same proposition saying merely because the two vehicles proceeding in opposite direction and even there is head on collision fixing joint liability or liability on one vehicle, it all depends upon the facts of each case for no eximatic rule for fixing joint liability on both vehicles.

7. Having regard to the same, auto is at fault for the injured to sustain while traveling and there is nothing on re-appreciation of facts to differ with the conclusion of the tribunal in fixing joint liability against the 1st respondent i..e, owner and the appellant/insurer of the auto.

8. Now coming to the other contention of the driver of the auto got no valid driving license. In support of the same, the 2nd respondent/insurer not only examined its witness supra among RWs.1 and 2 but also placed reliance on Ex.B2 driving extract, Ex.B3, office copy of the legal notice issued to the owner and the employee of RTA deposed with authorization letter by filing Ex.X1 and Ex.X2, driving license extract and the charge sheet also speaks the same from Ex.A3. However, having relied on the same what the tribunal observed of instead of LMV-transport only possessed LMV-non transport, that makes no difference, thereby held the insurer is also jointly liable. However, the tribunal ought to have been fixed liability to the extent of pay and recover, from driver got only LMV-non transport and not LMV-transport to drive the passenger also with reference to the said license as contemplated by Section 9 of the Motor Vehicles Act. Thus that part of the award of the tribunal of joint liability requires to be modified to the extent of pay and recover vide ***Insurance Company Limited Vs. Swaran Singh & Others***[3]***,*** **S.Iyyappan Vs. United India Insurance Company**[4] and **Kusum Lata ..vs. Satbir**[5]**.**

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**[6] and ***Oriental Insurance Company Limited Vs. Nanjappan & Others***[7] 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, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:20-11-2015

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[1] **2001 (1) ALT 495**

[2] 2013 ACJ 2141

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

[4] (2013) 7 SCC 62

[5] AIR 2011 SC 1234

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

[7] (2004) 13 SCC 224=2004-SAR(civil)-290