

THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO
M.A.C.M.A.M.P.No.4523 OF 2012 IN M.A.C.M.A.No.2740 OF 2015 &
M.A.C.M.A.No.2740 OF 2015

COMMON JUDGMENT:

This appeal by the Insurance Company, under Section 173 of the Motor Vehicles Act, 1988, (for short, "the Act"), is directed against the order and decree, dated 22.3.2012, in M.V.O.P.No.344 of 2009 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Krishna, Machilipatnam (for short, "the Tribunal") wherein the petition filed by respondent No.1/petitioner claiming compensation of Rs.1,00,000/- for the injuries sustained by him in the accident dated 15.8.2007 was allowed in part granting compensation of Rs.10,000/- with proportionate costs and interest at 7.5% per annum from the date of the petition till the date of realization.

2. The appellant – insurer is respondent No.3, along with respondent Nos.1 and 2 being the driver and owner of the truck bearing No.AP-07-TRF-4576, in M.V.O.P.No.344 of 2009 and the award was passed with a direction to respondent No.3 to pay and recover the same from respondent No.2. It is impugning the same, the present unnumbered appeal is filed by the insurer along with M.A.C.M.A.M.P.No.4523 of 2012 to condone the delay of 17 days in filing the appeal.

3. M.A.C.M.A.M.P.No.4523 of 2012 is allowed condoning the delay, though dismissed for default so far as appeal against respondent No.1 is concerned, and other respondents, even served, failed to attend and the reason mentioned is the administrative delay in giving opinion and obtaining sanction for filing the appeal.

4. At request, the appeal is taken up for hearing finally as respondent Nos.2 and 3 herein being the driver and owner of the

vehicle remained *ex parte*. In fact, respondent No.1 in the appeal is the claimant and the appeal against respondent No.1 was dismissed for default vide order dated 6.3.2015. From that, there is nothing to reduce the claim much less to pass any adverse order without the presence of respondent No.1.

5. Heard. Perused the material on record.

6. The only contention raised by the learned counsel for the appellant/respondent No.3 is that the Tribunal gravely erred in not exonerating the insurer and in fixing the pay and recovery liability.

7. The Tribunal in fact rightly fixed the liability to pay and recover from owner by the insurer, for the insurer cannot be totally exonerated vide ***National Insurance Company Limited Vs. Swaran Singh & Others***^[1], ***Kusumlatha and others V. Satbir and Others***^[2] and ***S.Iyyappan Vs. United India Insurance Company***^[3].

8. Thus, there is nothing to interfere with the direction or the finding of the Tribunal, but for to elaborate the pay and recovery directions as under:

The appellant shall deposit said amount within one month, failing which the claimant can execute and recover. It is made clear that the insurer is entitled, while depositing the amount payable, if not deposited or paid any amount so far to deposit the balance, 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 Act 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.

9. Accordingly, the M.A.C.M.A. is disposed of. There shall be no order as to costs.

10. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

Dr. JUSTICE B.SIVA SANKARA RAO

Date:25.11.2015
AMD

THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

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**M.A.C.M.A.M.P.No.4523 OF 2012 &
M.A.C.M.A.No.2740 OF 2015**

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DATE:25.11.2015

AMD

[\[1\]](#) (2004) 3 SCC 297=2004-ACJ-1
[\[2\]](#) AIR 2011 SC 1234 = 2011 (2) SCJ 639
[\[3\]](#) (2013) 7 SCC 62