HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.1278 of 2011
IN/AND
M.A.C.M.A No.298 of 2016

JUDGMENT:

Heard. The delay of 84 days in filing the appeal is condoned subject to not entitle to interest on the enhanced amount.

2. Heard learned counsel for the appellant/second respondent-insurance company and also the first respondent/claimant. The second respondent, owner of the vehicle, remained *ex parte* even though impleaded in the appeal, the appeal against him was dismissed for default, which is no way fatal vide expression of the Hon'ble Apex Court reported in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma And others**[1]. The appeal is taken up for hearing.

3. Perused the material on record. Undisputedly, from the evidence R.W.1-RTA officer and R.W.2- Senior Assistant of the insurance company coupled with Ex.B.2-driving licence certificate, it is clear that though the claimant was not holding a valid driving licence, he was driving LMV Transport vehicle. As per Section 3 of the Motor Vehicles Act, 1988, no person shall drive a motor vehicle in any public place, unless he holds an effective driving licence authorising him to drive the vehicle. Therefore, the above provision clearly speaks that unless a person possesses an effective driving licence, he cannot drive the vehicle. For a person holding transport licence even under Section 9 of the Act, it is not automatic, but for, after two years for LMV non-transport experience and that is also not automatic without fulfilling the test to be conducted for the eligibility.

4. Having regard to the above, the Tribunal gravely erred in fixing the joint liability instead of pay and recover on the insurer, the insurer cannot be totally exonerated but for to pay and recover from owner of vehicle

therefrom vide ***National Insurance Company Limited Vs. Swaran Singh & Others***[2], ***Kusumlatha and others V. Satbir and Others***[3] and ***S.Iyyappan Vs. United India Insurance Company***[4].

5. In the result, while allowing the appeal in part and while modifying, from joint and several liability of the insurer and insured, to the extent of pay by the insurer and then to recover from the vehicle owner. The respondents 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 in bank 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 M.V 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. There is no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

JANUARY 21, 2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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M.A.C.M.A.M.P.No.1278 of 2011
IN/AND
M.A.C.M.A (SR) No.11218 of 2011

Date: 21.01.2016

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[1] 2002 ACJ 828

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

[3] AIR 2011 SC 1234 = 2011 (2) SCJ 639

[4] (2013) 7 SCC 62