HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.815 OF 2005

JUDGMENT:

The 2nd respondent—insurer among two respondents including the owner of the lorry bearing No.ATS 9549, in O.P. No.170 of 1995 on the file of Motor Accidents Claims Tribunal cum District Judge, Nellore, (for short 'the Tribunal') which was maintained by wife, minor children and parents of deceased Ankala Prapulla Kumar, aged about 32 years as per Ex.A2—post mortem report, under Section 166 of Motor Vehicles Act, 1988 (for short 'the Act') for a compensation of Rs.3,00,000/- for the accidental death occurred on 07.09.1994 whereunder the Tribunal awarded an amount of Rs.2,93,000/- with interest at 12% per annum fixing joint liability against respondents 1 and 2 vide award dated 27.12.2001. It is, impugning the same, the 2nd respondent—insurance company preferred the appeal.

2) Heard learned standing counsel for appellant and learned counsel for claimants. Perused the material on record.

3) The claim petition averments show that the deceased went for repairing another vehicle with tools kit along with another person boarded as midway passenger, the driver of the lorry drove the vehicle in a rash and negligent manner and dashed the stationed lorry, which is insured with 2nd respondent and the deceased, having sustained injuries, while undergoing treatment in Government Hospital, Nellore with no

lapse of time, was succumbed therefrom.

4) The contention of 2nd respondent—insurer is that the 1st respondent—owner of the vehicle remained *ex parte* before the Tribunal, so that the claim is untenable and the deceased traveling as unauthorized passenger in the goods carriage and the insurer cannot be made liable.

5) Before the trial Court, PWs.1 to 3 including eye witness—PW.2 were examined and Exs.A1 to A5 including F.I.R, Post Mortem report, M.V.I report, charge sheet and certificate issued by Sri Kanakaruga Mechanical Works, Vijayawada were exhibited. On behalf of 2nd respondent—insurer their employee RW.1 was examined despite the allegation of the accident was due to rash and negligent driving of the driver of the lorry and dashed against the stationed lorry, the details of stationed lorry is not furnished anywhere either in the claim petition or in the counter of the respondent much less from FIR or charge sheet supra.

6) Repealing the contention of the Insurance Company that the policy not covered the unauthorized passenger of the goods vehicle, the Tribunal fixed joint liability referring to expressions of the Apex Court in ***Amritlal Sood and another vs Kaushalya Devi Thapar and others***[1] ***Andhavarapu Kamaraju vs Chintada Savitramma & others***[2] wherein it was interpreted that the word 'any person' used in policy covers the risk and from the evidence of PW.2 another

passenger, who deposed as they were fare paid passengers.

7) A perusal of the policy shows under IMT-13 for the non-fare paying passengers Rs.50/- collected and persons employed in question operation or maintenance, loading and unloading Rs.30/-. In fact, as can be seen from the evidence on record they are not the non-fare passengers under IMT-13 not covered under IMT-17 but for the Tribunal interpreted any person even the policy not covered the specific risk. No doubt, the policy is a comprehensive one and as per the Apex Court's expression in ***National Insurance Company Limited vs Baljit Kaur and others***[3] where the accident occurred and Tribunal fixed joint liability on the insurer from the policy comprehensive, even though insurer is not liable by virtue of the expression in ***New India Assurance Company Limited vs Ashrani***[4] for the expressions passed earlier to it, the insurer has to pay and recover.

8) Having regard to the above, the insurer is liable to pay and can recover from the owner of the vehicle or from the other stationed vehicle as the case may be.

9) Accordingly and in the result the appeal is partly allowed confirming the quantum of compensation awarded by the Tribunal and reducing the rate of interest from 12% per annum to 7.5% per annum from the date of claim petition till realisation, however, converting the joint liability of the insurer and insured (respondents 1 and 2 to the claim petition) into pay and recovery with the following terms and conditions:

The Insurer—2nd respondent to the claim petition shall deposit the said amount within one month, failing which the claimants can execute and recover. It is made clear from the settled expressions of the Apex Court in **United India Insurance Company Limited vs Lehru**[5] and **Oriental Insurance Company Limited vs Nanjappan & others**[6] 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 MV 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 claimants, 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.

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

Dr. B. SIVA SANKARA RAO, J

Dt.15.07.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date:15.07.2016

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[1] 1998 ACJ 531

[2] 2000 (1) L.S. 227

[3] 2004 ACJ 428

[4] 2003 (2) SCC 223

[5] 2003 ACJ 611

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