HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.350 of 2010

JUDGMENT:

The 2nd respondent-Bajaj Allianz General Insurance Company Limited among two respondents including 1st respondent-owner of auto bearing No.AP 07Y 2478, impugning the award of the tribunal dated 12.08.2009 in M.V.O.P.No.836 of 2008, maintained by three claimants, no other than wife, minor child and mother of the deceased-M.Veera Raghavulu, aged about 30 years as per the Ex.A4-Post Mortem Report, from the claim under Section 166 of the Motor Vehicles Act (for short 'the Act'), for a compensation of Rs.4,00,000/-, though Sections 166 and 163-A are mentioned, from the tribunal given a clear finding of rash and negligent driving, by taking the claim under Section 166 of the Act, in so deciding, since awarded compensation as Rs.4,00,000/- as prayed for with interest at 7% p.a. impugning the fixing of joint liability on the insurer, in seeking exoneration of the insurer from the contention of driver has no valid driving license and despite notice, owner failed to produce and thereby seeking to allow the appeal.

2. Learned counsel for the appellant-insurer reiterated the same.

3. Whereas, it is the submission of the learned counsel for the claimants that the award of the tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere and hence to dismiss the appeal.

4. The owner-4th respondent herein, even served failed to attend and hence taken as heard to decide on merits. Heard and perused the material on record.

5. The only issue involved is whether there is a driving license to the driver. The material document is Ex.A5-Motor Vehicles Inspector Report, which clearly shows from column No.17 of the driving license has not produced at the time of inspection, though license is supposed to be with the vehicle. The charge sheet, no doubt, refers to the driver surrendered and after verification of the documents taken to custody, in fact, the insurer issued notice under Ex.B3 to the owner to produce the license particulars sent by Ex.B4 registered letter even the same was there, the owner failed to produce and conveniently remained ex parte before the tribunal and the evidence of RW.1 is also to the effect that the driver has no valid driving license and despite notice owner failed to produce. Once such is the case, to draw the inference against the owner for non-production. Had it been available, he could have produced. For the non-availability that is substantiated

by column No.17 of M.V.I.Report no driving license is produced, thereby suffice to say the tribunal should have considered in saying the insurer discharged its burden from the material available on record and there is nothing to rebut against the insurer. Thereby, the joint liability to be converted into pay and recovery.

6. Accordingly, appeal is partly allowed by modifying the joint liability to the extent of pay and recovery with the following directions:

The insurer shall deposit the said amount within one month from the date of receipt of a copy of this order, failing which the claimants can execute and recover. It is made clear from the settled expressions of the Apex Court in United India Insurance Co. Ltd. V. Lehru[1] and *Oriental Insurance Company Limited Vs. Nanjappan*[2] that the insurer is entitled, while depositing the amount payable, if not deposited or paid any amount 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 respective insured as an assurance for execution and recovery in the same proceedings or under revenue recovery as per the

[1] JT-2003(2) SC 595 = 2003 ACJ 611
[2] (2004) 13 SCC 224=2004-SAR(civil)-290

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.

7. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

_____

Dr. B. SIVA SANKARA RAO, J

Date:02.11.2016
pab