HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.581 of 2010

JUDGMENT:

The 2nd respondent-insurer, among two respondents including owner of the auto, impugning the award of the tribunal dated 28.08.2007 in MVOP No.367 of 2004, maintained by the two claimants no other than parents of the deceased boy, by name, K.Venkatesu, aged about 11 years, who died in the motor accident on 07.01.2004, from the contest by the insurer for 1st respondent-owner remained ex parte, in seeking exoneration from the driver of the auto possessing light motor vehicle-non-transport instead of transport, from the tribunal fixed pay and recovery, impugning the same, maintained the present appeal.

2. The contentions in the grounds of appeal vis-à-vis oral submission of learned counsel for the insurer are that the tribunal gravely erred in fixing liability of pay and recovery instead of total exoneration, for the driver has no valid driving license, one of the violation of the policy conditions, thereby, sought for allowing the appeal by exonerating the insurer, not otherwise, saying quantum is excessive to reduce.

3. Whereas, it is the submission of 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 3rd respondent-owner to the appeal even served failed to attend. Heard and perused the material on record.

5. So far as the quantum is concerned, the compensation awarded by the tribunal for the deceased boy, who was aged 11 years, is utterly low but for no cross objections to enhance.

6. So far as pay and recovery liability is concerned, the law is fairly settled from the expression in National Insurance Company Limited v. Swaran Singh[1] reiterated in subsequent expressions in Kusum Lata v. Satbir[2] and S.Iyyappan v. United India Insurance Company[3], that once the policy covers the risk, the insurer has to indemnify the owner but for to pay and recovery for any violation of permit conditions of the policy. Hence, there is nothing wrong in the impugned award passed by the tribunal.

7. Accordingly, the appeal is disposed of. The pay and recovery directions are as follows:

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[4] and *Oriental Insurance Company Limited Vs. Nanjappan & Others*[5] 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

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[1] (2004) 3 SCC 297=2004-ACJ-1
[2] AIR 2011 SC 1234
[3] (2013) 7 SCC 62
[4] JT-2003(2) SC 595 = 2003 ACJ 611
[5] (2004) 13 SCC 224=2004-SAR(civil)-290

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 claimant (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 claimant, 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.

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

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Dr. B. SIVA SANKARA RAO, J

Date:30.11.2016
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