HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.84 of 2010

JUDGMENT:

The 2nd respondent—insurer among two respondents including owner cum rider of Hero Honda bearing No.AP 23 L 3267, in O.P. No.428 of 2007 on the file of Motor Vehicles Accidents Claims Tribunal-cum-Principal District Judge, Medak, at Sanga Reddy (for short 'the Tribunal') which is maintained by the claimants, who are no other than major son and married daughter of the deceased Sangalla Balamma, aged about 35 years, under Section 166 of the Motor Vehicle Act, 1988 (for short 'M.V. Act') for compensation of Rs.3,50,000/- for the accidental death of deceased in the motor accident dated 04.05.2007. From the contest by the insurer, the Tribunal having held that 1st respondent, owner-cum-driver of the Hero Honda, has no driving licence and the insurer did not discharge the burden and calling for records from RTA but for relying upon Exs.A3 & A6—charge sheet and MVI report respectively show no licence produced, awarded Rs.3,12,000/- with interest at 7.5% per annum with joint liability against respondents. Impugning the said award maintained the appeal.

2) It is the contention of the learned standing counsel for insurer—2nd respondent that the Tribunal gravely erred in considering own documents of the claimants though the claimants showing the driver has no driving licence. Once that got relied upon what mere filing of documents is not sufficient, the petitioner has get it proved by got examining any witness, hence to set aside the award, instead of fixing joint liability exonerating the insurer and owner of the bike having conscious knowledge drove the vehicle without having driving

licence, thereby, there is no question of indemnifying the owner by the insurer to the claimants, hence to exonerate the insurer.

3) Whereas it is the contention of the learned counsel for the claimants that the award of the Tribunal holds good in fixing joint liability against respondents and for this Court while sitting in appeal there is nothing to interfere and the insurer failed to discharge the burden lies on it, hence prayed to dismiss the appeal.

4) Heard learned standing counsel for insurer and learned counsel for claimants and perused the material on record.

5) Having regard to the above, the fact that the accident was the result of rash and negligent driving of the driver of the vehicle and the claimants are the major son and major daughter and there are no other dependents, as per the Division Bench expression of the Apex Court, they are entitled to compensation under Section 166 of M.V Act as claimed. Hence impugned order no way requires interference with regard to quantum of compensation so also the rate of interest but for joint liability how far sustainable to consider.

6) Coming to the liability of the insurer, if any, is concerned, no doubt, as held by the Apex Court in ***National Insurance Company Limited vs Rattani***[1] subsequently the same was reiterated by the Apex in ***National Insurance Company Limited vs Savithri Devi***[2] that when the claimants relied on the documents when the insurer relied upon the same nothing more to say that is not reliable. The charge sheet shows the driver has no valid driving license and MVI report column No.17 clearly speaks no license was produced, as such it is

[1] 2009 (2) SCC 75
[2] 2013 (11) SCC 554

suffice to say that unless the same is rebutted much less explained either by the claimant or by the owner nothing more to say. The Tribunal gravely erred in holding that insurer still to discharge any further burden, thereby suffice to say rider-cum-owner has no driving license.

7) No doubt, it is one of the contentions of the insurer that once the driver deliberately and knowing fully driven the vehicle without any license. However, the policy covers the risk undisputedly as laid down by the Apex Court in ***S.Iyyappan Vs. United India Insurance Company***[3] when the license is found fake, there is nothing to say the owner willfully and deliberately with such conscious knowledge allowed the driver to drive so to exonerate totally. Once the policy covers the risk, the insurer is to indemnify to the third party claimants but for to pay and recovery from the owner for any violation of the conditions or permit.

8) Accordingly and in the result the appeal is partly allowed by modifying the joint liability into pay and recovery with the following 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***[4], ***Oriental Insurance Company Limited vs Nanjappan & others***[5] ***Kusumlatha and others V. Satbir and Others***[6] that the insurer is

3 (2013) 7 SCC 62
4 2003 ACJ 611
5 (2004) 13 SCC 224 = 2004 SAR (Civil) 290
6 AIR 2011 SC 1234 = 2011 (2) SCJ 639

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 claimants (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. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.18.10.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.84 of 2010

Date: 18.10.2016

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