HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.596 of 2010

JUDGMENT:

The 2nd respondent—insurer among two respondents including owner of lorry bearing No.AP 26 U 2439 maintained the appeal impugning the award passed on 23.03.2007 in O.P. No.712 of 2005 on the file of Motor Vehicles Accidents Claims Tribunal-cum-Principal District Judge, Nalgonda (for short 'the Tribunal') which is maintained by the injured claimant under Section 166 of the Motor Vehicle Act, 1988 (for short 'M.V. Act') for compensation of Rs.1,00,000/- for the injuries sustained in the motor accident dated 08.06.2005, from the contest of respondents, the Tribunal awarded Rs.65,982/- with interest at 7.5% per annum.

2) Heard learned standing counsel for appellant—insurer and learned counsel for respondent—claimant. Perused the material on record.

3) A perusal of the record shows that on 08.06.2005 the injured and another by name Maasu Laxmaiah boarded an auto bearing No.AP 24 V 5849 to go to Nalgonda, at about 6.30 am the auto driver stopped the auto to board some passengers meanwhile the driver of lorry bearing No.AP 16 U 2439 of 1st respondent insured with 2nd respondent came in a rash and negligent manner, carelessly and dashed the auto, as a result, the claimant sustained injuries. There is no independent witness adduced by the respondents. Ex.A4—charge sheet filed against driver of the lorry of 1st respondent by also mentioning Sections 181 and 187 of M.V Act for not having effective driving licence. MVI report is not filed. Exs.A1 & A3—FIR and scene observation report respectively, when clearly pointing from the evidence

of injured that the accident was the result of rash and negligent driving of the driver of the lorry of 1st respondent in dashing the auto while boarding of one passenger or allowing of one passenger as the case may be. The Tribunal, while so discussing in para No.8 in relation to issue No.2 observed that even 2nd respondent-insurer did not adduce any evidence which would be held liable as driver of lorry is negligent in driving the vehicle and hit the auto stopped on the left side of the road causing the accident, resulted injuries to petitioner among others and thereby, 1st respondent alone is liable to pay compensation.

4) No doubt, the charge sheet speaks driver is not having effective driving licence. In fact, the law is also fairly settled in this regard that on the ground of imperfect licence as one of the violation of the terms of the policy, for policy otherwise covered the risk, the insurer cannot be exonerated from the liability but for to pay and recover from the expressions of the Apex Court in ***National Insurance Company Limited Vs. Swaran Singh & Others***[1] ***S.Iyyappan Vs. United India Insurance Company***[2] ***and Kusumlatha and others V. Satbir and Others***[3]***.***

5) Accordingly and in the result, the appeal is partly allowed by modifying the liability in to pay and recovery with following terms:

The Insurer—2nd respondent to the claim petition shall deposit the said amount within one month, failing which the claimant 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] and ***Oriental Insurance Company Limited vs Nanjappan & others***[5] that the insurer is entitled to recover from the owner—1st respondent,

[1] (2004) 3 SCC 297=2004-ACJ-1
[2] 2013 (7) SCC 62
[3] AIR 2011 SC 1234 = 2011 (2) SCJ 639
[4] 2003 ACJ 611
[5] (2004) 13 SCC 224 = 2004 SAR (Civil) 290

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 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.

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

Dr. B. SIVA SANKARA RAO, J

Dt.06.12.2016
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