HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A. No.3225 of 2004

JUDGMENT:

The injured claimant filed this appeal having been aggrieved by the Order/Award dated 10.02.2003 of the learned Motor Accidents Claims Tribunal-cum-I Additional District Judge, Kadapa (for short, 'Tribunal') in M.V.O.P.No.738 of 2000, awarding compensation of Rs.30,000/- with interest at 9% per annum as against the claim of Rs.1,00,000/- fixing liability against respondent No.1—owner of the jeep bearing No.AP 03 A 9443, under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act').

2) Heard learned counsel for appellant vis-à-vis learned standing counsel for 2nd respondent—insurer. The respondent No.1—owner of the jeep remained ex parte before the Tribunal even impleaded in this appeal dismissed for default, which is no way fatal to the maintainability of the appeal vide Division Bench expression of this Court in ***Meka Chakra Rao vs Yelubandi Babu Rao***[1] and the same is recorded. Perused the material available on record.

3) The learned standing counsel for 2nd respondent—insurer admitted that the vehicle was insured with respondent No.2 covered by Ex.B1—comprehensive standard package policy including covering the risk of inmates of jeep. While denying the accident, he contended that there is change of ownership of the vehicle, which is not brought on record and that the subsequent owner is not impleaded. It is his further contention that once the driver has no valid driving licence and was knowingly allowed by the owner to drive the vehicle, as can be seen from the charge sheet, the insurer cannot be made liable as per the several expressions of the Apex Court in ***National Insurance Company Limited vs Swaran Singh***[2]. Thus for this Court, while sitting in appeal, there is nothing to interfere against exoneration of the insurer from the liability. The rate of interest

awarded by the Tribunal is highly excessive and exorbitant, hence prayed to reduce the rate of interest.

4) The Tribunal from the evidence of PWs.1 and 2 coupled with Exs.A1 to A5 including Ex.A3—charge sheet and from the evidence of RW.1 on behalf of insurer with Ex.B1—policy marked, held that the accident was the result of rash and negligent driving of the driver of the jeep, in which the petitioner was travelling and the petitioner sustained two simple injuries and one grievous injury as per Ex.A2—wound certificate. Though PW.2 deposed about the disability and issued Ex.A4—disability certificate, the same cannot be believed as he stated that the same was issued on the basis of the treatment given earlier to the petitioner. Further, it was observed that the very charge sheet speaks that the driver was not having valid driving licence and therefore the insurer cannot be made liable but for the owner. The quantum of compensation awarded was Rs.30,000/- with proportionate costs and interest at 9% per annum and it was also directed that if the said amount was not deposited within one month from the date of order, it shall carry interest at 15% per annum.

5) There is no doubt on the manner of accident proved from the evidence of PW.1 with reference to Exs.A1 to A5 more particularly with reference to Exs.A1 to A3 as held by the Apex Court in ***National Insurance Company Limited vs Savitri Devi***[3] and ***NIC vs Rattani***[4]**.**

6) Now coming to the quantum of compensation is concerned, there is nothing on record to show that there is any private treatment or incurring of medical expenses. However, the fact remains that there are two simple injuries and one fracture and it would be reasonable for the two simple injuries Rs.4,000/- and for fracture Rs.20,000/- and Rs.6,000/- towards medical expenses, extra nourishment, attendant and transport charges are awarded, totaling to Rs.30,000/- and thereby there is nothing to interfere with the quantum.

7) So far as the rate of interest is concerned, the rate of interest is

reduced from 15% per annum to 12% per annum though 7.5% per annum that was reasonable as the rate of interest to be awarded is considering the factum of date of award passed on 10.02.2003.

8) Now coming to the exoneration of the insurer is concerned, the law is fairly settled from the three judge bench expression of the Apex Court in ***National Insurance Company Limited Vs. Swaran Singh & Others***[5] ***S.Iyyappan Vs. United India Insurance Company***[6] ***and Kusumlatha and others V. Satbir and Others***[7] that in the absence of owner deliberately and intentionally allowed the driver with no licence to drive the vehicle, the insurer having issued the policy_cannot avoid liability to indemnify the third party claim but for to pay and recover.

9) Having regard to the above, the award of the Tribunal of exoneration of the insurer is modified and set-aside and liable to be fixed on the insurer to the extent of pay and recovery with the following terms:

The Insurer shall deposit said amount within one month, failing which the claimant can execute and recover. It is made clear that the insurer is entitled, while depositing half of the amount payable for 1st respondent in claim petition, from pay and recovery liability to approach the Tribunal to direct the RTA concerned not to register any transfer of the jeep and to seek for attachment of the jeep 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 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.

10) Accordingly, the appeal is partly allowed confirming the quantum of compensation awarded by the Tribunal and reduced the rate of interest from 15% per annum to 12% per annum from the date of the claim

petition till realisation. There is no order as to costs.

11) Consequently, miscellaneous petitions, if any pending in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.13.04.2016
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[1] 2001 (1) ALT 495 DB

[2] 2004 (3) SCC 247

[3] 2013 (11) SCC 554

[4] 2009 (2) SCC 75

[5] (2004) 3 SCC 297=2004-ACJ-1

[6] 2013 (7) SCC 62

[7] AIR 2011 SC 1234 = 2011 (2) SCJ 639