

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.1459 of 2010

IN/AND

M.A.C.M.A.No.173 of 2016

ORDER:

Heard the learned counsel for the appellant in the un-numbered appeal vis-à-vis the application in MACMA MP No.1459 of 2010, to condone the delay of 98 days in filing the appeal and also heard the learned counsel for the 2nd respondent/insurer. Perused the material on record.

2. The 1st respondent to the appeal, owner of Auto bearing No.AP 16 TT 9871 remained exparte before the tribunal and though impleaded in the appeal, dismissed for default on 24.02.2015 that no way fatal to the maintainability of the appeal vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**^[1].

3. For the reasons stated in the affidavit filed in support of the petition, the delay of 98 days in filing the appeal is condoned. The appeal is taken up for hearing.

4. The tribunal in all awarded Rs.49,213/- as compensation and fixed liability only against the owner by exonerating the insurer. Impugning the same, the

present appeal is filed.

5. Undisputedly, there is a fracture injury sustained by the injured claimant besides the other three simple injuries. So far as the functional disability of 45% is concerned, there is no basis as rightly even concluded by the tribunal. However, the tribunal in all for the said injuries awarded Rs.40,000/- and Rs.9213/- towards medical expenses. So far as the fracture is concerned, as on the date of accident i.e., 05.02.2006, there is a fracture of left ankle. Hence, Rs.25,000/- for the fracture injury including pain and sufferance, Rs.9,000/- for the three simple injuries, Rs.10,000/- towards medical expenses, Rs.6,000/- towards loss of earnings, Rs.10,000/- towards transport charges and extra nourishment are awarded. Thus, in total it comes to Rs.60,000/-.

6. So far as exoneration of the insurer is concerned, the tribunal gravely erred in fixing liability against owner only instead of pay and recovery from possessing light motor vehicle-non-transport instead of light motor vehicle-transport vide **Insurance Company Limited v.**

Swaran Singh^[2], **Kusum Lata v. Satbir**^[3] and

S.Iyyappan v. United India Insurance Company^[4].

7. Accordingly and in the result, the appeal is allowed

by enhancing compensation from Rs.49,213/- to Rs.60,000/- and by fixing liability against the insurer also to the extent of pay and recovery, with the following directions:

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. Lehu**^[5]
a n d ***Oriental Insurance Company Limited Vs.***

Nanjappan & Others^[6] 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 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. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:19-01-2016

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[\[1\]](#) **(2001 (1) ALT 495)**

[\[2\]](#) (2004) 3 SCC 297=2004-ACJ-1

[\[3\]](#) AIR 2011 SC 1234

[\[4\]](#) (2013) 7 SCC 62

[\[5\]](#) JT-2003(2) SC 595 = 2003 ACJ 611

[\[6\]](#) (2004) 13 SCC 224=2004-SAR(civil)-290