HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.1904 OF 2010

JUDGMENT:

This is an appeal filed by the insurance company-Respondent No.2 aggrieved by the award dated 27.11.2008 in M.O.P.No.1297 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VIII Additional District Judge, Visakhapatnam.

2) The clam petition was filed by the dependants of the deceased P.Sanjeeva Rao, under Section 166 of the Motor Vehicles Act seeking compensation for an amount of Rs.4,00,000/- for the death of the deceased in a motor accident occurred on 17.09.2005 at Summadevi junction, NH-5 road, Palasa Mandal, Srikakulam District.

3) Heard the learned counsel for the insurer and the learned counsel for the claimants. The fact that the deceased was traveling with the goods proved from the evidence on record could not be disputed, but for main contention of the insurer of when there is no seating capacity allowing anybody to sit in the cabin meant only for the driver of the goods auto that no other person and the deceased was for no seating capacity even allegedly traveling with the goods, no other than third party is the main contention of the insurer in seeking exoneration of the insurer from liability to indemnify.

4) Learned counsel Sri A.Rama Krishna Reddy placed reliance on the expression of the Apex Court in ***United India Insurance Co. Ltd. V. Suresh K.K*[1]*.*** There, it was held in the three wheeler goods carriage auto sharing of seat by the driver at the time of accident to the claimants/injured is nothing but violation of policy. However, considering the fact of deceased was worker, the insurer was directed to pay and recover therefrom.

5) In those facts, reliance was placed that earlier three Judge bench

expression in ***National Insurance Company Limited VS. Baljit Kaur***[2] where also a three wheeler goods trolley in saying driver could not be allowed anybody else to share his seat either as passenger or owner of the vehicle not supposed to share the seat of the driver and violation of the conditions of the contract of insurance held proved in its approval. The fact that the owner of the goods is covered by Act policy, statutory liability under Section 147(1)(i)(c) not in dispute as also reiterated by the three Judge bench expression of the Apex Court in ***National Insurance Company Limited V. Prem Bhai Patel***[3]. Thus, even there is violation of the permit and thereby it constitutes violation of the policy conditions, once risk is covered by the statutory liability, this Court feels nothing to interfere with the Tribunal's award of pay and recovery but for clarifying.

6) In the result, the appeal is disposed of. The respondents shall deposit awarded 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 Co. Ltd. V. Lehru**[4] & ***Oriental Insurance Company Limited Vs. Nanjappan & Others***[5] that the insurer is 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 Motor Vehicles 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.

7) Miscellaneous petitions, if any pending in this appeal, shall

stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 22-02-2016
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[1] AIR 2008 SC 2871

[2] (2004)2 SCC-1

[3] (2005)6 SCC 172

[4] JT-2003(2) SC 595 = 2003 ACJ 611

[5] (2004) 13 SCC 224=2004-SAR(civil)-290