HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP Nos.4568, 4569 and 4570 of 2015
IN/AND
MACMA No.2772 of 2013

JUDGMENT:

The 3rd respondent-insurer among the three respondents including the driver, owner, subsequent owner and insurer of the lorry bearing No.AP 20V 1129, of the claim in MVOP No.678 of 2010 maintained under Section 166 of the Motor Vehicles Act (for short 'the Act') by the four claimants no other than wife, major son, major married daughter and minor daughter of the deceased-P.Venkateswara Rao, aged about 50 years as per the finding of the tribunal, for a compensation of Rs.6,00,000/- since contested by the insurer for the others remained ex parte before the tribunal, the tribunal having held that the accident was the result of rash and negligent driving of the driver of the lorry, however held in support of the contest of the insurer of the driver was not having valid driving license since it is a fake one as proved from the evidence of RWs.1 and 4, Ex.B2-driving license, Exs.X1 to X4, which are Case Diary, Driving License, B-Register, Ex.X4-Extract of Original Driving License, the tribunal there from granted compensation of Rs.3,71,000/- and ordered pay and recovery. It is the same now impugned in the appeal maintained by the insurer.

2. Pending the appeal, MACMA MP Nos.4568 and 4569 of 2015 are filed to declare the 4th claimant as major and to discharge the 1st claimant from guardianship and the same are allowed.

3. Heard the learned counsel for the insurer and also the learned counsel for the claimants. Perused the material on record.

4. There is nothing to show that the owner consciously having aware of the so called fake license permitted the driver. In the absence of which, the insurer cannot be exonerated but for to pay and recovery, as the law is fairly settled right from the expression of the Apex Court in United India Insurance Co. Ltd. V. Lehru[1] reiterated by the three Judges Bench in National Insurance Company Limited v. Swaran Singh[2] and subsequently in *Oriental Insurance Company Limited Vs. Nanjappan*[3] and also from the expressions in Kusum Lata v. Satbir[4] and S.Iyyappan v. United India Insurance Company[5].

5. Having regard to the above, MACMA MP Nos.4568 and 4569 of 2015 are allowed. The application in MACMA MP No.4570 of 2015 for permission to the 4th claimant to withdraw her share of compensation is dismissed, by giving liberty to move the same before the tribunal. The appeal is disposed of by elaborating the following pay and recovery directions:

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[1] JT-2003(2) SC 595 = 2003 ACJ 611
[2] (2004) 3 SCC 297=2004-ACJ-1
[3] (2004) 13 SCC 224=2004-SAR(civil)-290
[4] AIR 2011 SC 1234
[5] (2013) 7 SCC 62

The insurer shall deposit said amount within one month from the date of receipt of a copy of this order, failing which the claimants can execute and recover. It is made clear from the settled expressions of the Apex Court in Lehru (supra) and Nanjappan (supra) that the insurer is entitled, while depositing the amounts payable, if not deposited or paid any amount 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 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 withdrawals but for to invest the respective balance amount separately 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 pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:15.12.2016
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