HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.Nos.180 and 181 of 2016

COMMON JUDGMENT:

As both the appeals arise out of the same accident, they are disposed of by the common judgment.

2. Heard and perused the material on record.

3. In the claim petitions filed as O.P.Nos.1169 and 1171 of 2008 by the respective claimants i.e., wife and children of both the deceased by names, Rathod Peeraji and Hariya, against the owners (past and present) and insurer of the jeep bearing No.AP 22 V 8000 of the claims under Section 163-A of the Motor Vehicles Act (for short 'the Act') for Rs.5,00,000/- each, from the contest by insurer/3rd respondent of driver has no valid driving license and got light motor vehicle-non-transport, the tribunal fixed joint liability and awarded compensation of Rs.3,00,000/- and Rs.2,60,000/- with interest @ 7.5% p.a., respectively, vide award dated 06.02.2010.

4. It is impugning in both the appeals fixing joint

liability instead of exoneration as per the insurer, the insurer maintained both the appeals.

5. Though quantum is in dispute as excessive, there is nothing to interfere and reduce so far as quantum concerned.

6. Coming to the joint liability fixed by the tribunal and whether the insurer to be exonerated as contended in the appeals concerned, the law is fairly settled from the expressions of the Apex Court in **Insurance Company Limited v. Swaran Singh**[1]**,** **Kusum Lata v. Satbir**[2] and **S.Iyyappan v. United India Insurance Company**[3] that where the driver got no valid driving license from light motor vehicle-non-transport instead of light motor vehicle-transport, the insurer has to pay and recover and cannot be exonerated from the liability in toto.

7. Having regard to the above, the finding of the tribunal of joint liability requires to be modified to the extent of liability of pay and recovery.

8. Accordingly and in the result, while allowing the appeal in part with joint and several liability of the

insurer and insured, to pay by the insurer to the claimants and then to recover from the insured. 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 **United India Insurance Co. Ltd. V. Lehru**[4] and ***Oriental Insurance Company Limited Vs. Nanjappan & Others***[5] 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 claimants (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 claimants, 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.

9. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:19-01-2016
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[1] (2004) 3 SCC 297=2004-ACJ-1

[2] AIR 2011 SC 1234

[3] (2013) 7 SCC 62

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

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