

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.897 of 2016

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JUDGMENT:

The 3rd respondent—insurer among three respondents, filed the present appeal impugning the award passed on 29.06.2010 in M.V.O.P. No.149 of 2008 on the file of Motor Accidents Claims Tribunal-cum-Principal District Judge, East Godavari District, Rajahmundry (for short 'the Tribunal'), which is maintained by injured claimant, under Section 166 of the Motor Vehicle Act, 1988 (for short 'M.V. Act') for compensation of Rs.4,00,000/- for the injuries sustained by him in the motor accident dated 16.06.2007, from the contest the Tribunal awarded compensation of Rs.1,46,526/- with interest at 7.5% per annum fixing joint liability against respondents 1 to 3 viz., driver, owner and insurer.

2) The M.A.C.M.A. M.P. No.1006 of 2011 is filed to condone the delay of 142 days in filing the appeal is condoned, as the reasons assigned are due to administrative grounds in getting legal opinion and according sanction to file the appeal.

3) Heard learned standing counsel for appellant—insurer and learned counsel for the claimant—respondent No.1. Respondent Nos.2 & 3/respondent No.1 & 2—driver and owner of the oil tanker bearing No.TN 09 Z 9909 remained exparte before the Tribunal and even impleaded in this appeal dismissed for default, which is no way fatal to the maintainability of the appeal vide ***Meka Charadhara Rao vs Yelubandi Babu Rao***^[1] and the same is recorded. Perused the material on record.

4) The main contention of the learned standing counsel for appellant-insurer is that the owner of the vehicle was having only temporary permit, to ply the vehicle vide Ex.X3, for a short period and the same is expired; that the driver was also not having valid driving licence of LMV but having possessed only LMV non-transport, which is covered by Ex.X3 as referred by the Tribunal in Para Nos.16 and 17 of the award. However, the

Tribunal ignored the same and in the evidence the same is not reflected, therefrom, the insurer sought exoneration by setting aside the award of the Tribunal while fixing joint liability.

5) Whereas it is the contention of the learned counsel for claimant/ 1st respondent to the appeal, that the permit is valid and subsisting as on the date of accident and the same is observed by the Tribunal at para No.17 of the award with reference to Ex.X3. Perused the material on record.

6) The fact that the driver of the vehicle involved in the accident must require licence of LMV transport but possessed only LMV non-transport, is proved from the evidence of RW.1 with reference to Ex.X3 as clearly held by the Tribunal in para No.16 of the award and from RW.1's cross examination also there is nothing that could be discredited. In fact, a person, without possessing LMV non-transport and without minimum experience, is not entitled to LMV transport and he will be entitled to that only after passing tests and even if not qualified, he has to appear again for the test after a prescribed as per Section 9 (5) of M.V Act not even in dispute. The law is also fairly settled in this regard that on the ground of imperfect licence as one of the violation of the terms of the policy for policy otherwise covered the risk, the insurer cannot be exonerated from the liability but for to pay and recover from the expressions of the Apex Court in

National Insurance Company Limited Vs. Swaran Singh & Others^[2]

S.Iyyappan Vs. United India Insurance Company^[3] ***and Kusumlatha***

and others V. Satbir and Others^[4].

7) Accordingly and in the result, the appeal is partly allowed by modifying the joint liability to pay and recovery with 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 respondent No.2 in claim petition, from pay and recovery liability to approach the Tribunal to

direct the RTA concerned not to register any transfer of the auto and to seek for attachment of the auto 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.

8) Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.09.02.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date: 09.02.2016

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[\[1\]](#) 2001 (1) ALT 495 DB
[\[2\]](#) (2004) 3 SCC 297=2004-ACJ-1
[\[3\]](#) 2013 (7) SCC 62
[\[4\]](#) AIR 2011 SC 1234 = 2011 (2) SCJ 639