HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.Nos.183 of 2010 and 541 of 2011

COMMON JUDGMENT:

The 2nd respondent-insurer, among two respondents including the owner of auto bearing No.AP 20V 6087, impugning the awards of the tribunal in MVOP Nos.1076 and 1078 of 2007 by the two respective claimants, maintained under Section 166 of the Motor Vehicles Act (for short 'the Act'), for Rs.1,50,000/- and Rs.1,00,000/- respectively, of the injuries sustained by them in the motor accident dated 03.04.2007, while travelling in the auto, due to the alleged rash and negligent driving of the driver of the auto, which turned turtle resulting the injuries and after contest by the insurer from the owner of the auto remained ex parte in both the claims, with main contention of the insurer of some of the cover notes misplaced while in bus transit of the insurance company and the cover note used in the two claim petitions by the claimants is one such and the 1st respondent-owner, despite notice issued to furnish particulars of the policy permit and driving license etc., did not furnish and it is because there is no policy issued, as otherwise could have furnished, being a party to the proceedings, having remained ex parte and the tribunal gravely erred in saying cover note once not produced has not issued other, by cogent material in inferring, as if, issued by the insurer and said finding of the tribunal is to be set aside and the insurer is to be exonerated, apart from the quantum of compensation awarded by the tribunal is excessive and the so called grievous injuries not proved much less by examination of the doctor, who treated the respective two injured, thereby, sought for allowing the appeals setting aside the awards of the tribunal.

2. The owner of the vehicle in the respective claims even served failed to attend. Hence, taken as heard. Perused the material on record.

3. Coming to the quantum of compensation, the wound certificate with X-ray film and evidence of injured claimants establish the respective grievous injury with fracture by each of the two claimants vide Ex.A3 and in one of the case Ex.A6-X-ray film tallies, there is nothing to disbelieve the wound certificate issued by the Government Hospital, Khammam, on the date of accident when they immediately were admitted and treated for the fractures respectively. The mere non-examination of the Doctor, thereby, not fatal much less to belie the evidence of PW.1 coupled with Ex.A3-wound certificates issued by the Government Hospital, establishing

the fracture with 2 or 3 simple injuries in each of the cases. Thereby, the quantum no way requires interference.

4. Now, coming to the exoneration of the insurer concerned, cover note once issued and even after the case is filed, but for issued notice to the owner of the vehicle to produce the accident particulars and of the policy and of the permit and of the driving license of the driver, not even chosen to cancel the policy or cover note to support the version through RW.1 of the insurer of some of the cover notes while in transit lost and it is one of such cover notes to believe. No doubt, notice was served on the 1st respondent to produce the particulars. Non-production of the same, is fatal only against the 1st respondent-owner but the claimants/third parties cannot be suffered. Thereby, it is a fit case to order pay and recovery, if the owner could not establish that there is a valid cover note issued on payment of premium.

5. Accordingly and in the result, the appeals are partly allowed while upholding the quantum of compensation and other findings of the tribunal, however, by modifying the joint liability to the extent of liability to pay and recover, for the insurer to maintain execution petition, after deposit of the amount against the owner, the owner is not disentitled to produce if at all there is a duly issued cover note and policy

consequent there from on payment of premium and based on it to defend, else to pay by reimbursing to the insurer. It is thus with the following pay and recovery directions:

The insurer shall deposit said amounts 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[1] and *Oriental Insurance Company Limited Vs. Nanjappan & Others*[2] 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 subject to failure of owner to prove existence of policy pursuant to the cover note and genuineness of cover note to bind the insurer 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

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[1] JT-2003(2) SC 595 = 2003 ACJ 611
[2] (2004) 13 SCC 224=2004-SAR(civil)-290

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 respective awards of the Tribunal hold good. There is no order as to costs.

6. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

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Dr. B. SIVA SANKARA RAO, J

Date:23.11.2016
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