HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.4370 of 2008

JUDGMENT:

The 2nd respondent—insurer among four respondents including owner of the lorry bearing No.ADB 6336 and the other vehicle owner and insurer, who are claim petition respondents 3 and 4 viz., lorry bearing No.AP 26 T 99, maintained the present appeal impugning the award passed on 20.12.1996 in O.P. No.782 of 1992 on the file of Additional Motor Accidents Claims Tribunal, Nellore (for short 'the Tribunal'), which is maintained by wife and children of deceased Shaik Basha, under Section 166 of the Motor Vehicle Act, 1988 (for short 'M.V. Act') for compensation of Rs.1,00,000/- for the accidental death of the motor accident dated 19/20.06.1992, from the respective contest by the insurers for the owners remained exparte, the Tribunal in awarding compensation of Rs.1,00,000/- with interest at 12% per annum fixing joint liability equally i.e., 50% each on the two vehicles.

2) It is the contention of the learned standing counsel for insurer—2nd respondent that the Tribunal gravely erred in not considering the column 16 of Ex.A3—MVI report filed by the claimants showing the name of the driver of the lorry of the 1st respondent was one D.Suryanarayana and the license issued on 15.05.1992 was finally renewed on 15.05.1992, apart from the earlier renewal on 29.07.1982 and the Tribunal despite the same failed properly to appreciate the same in fixing liability jointly against the 2nd respondent to indemnify 1st respondent though there is no valid driving licence to the driver of the vehicle, hence to exonerate the insurer and prayed to allow the appeal.

3) Whereas it is the contention of the learned counsel for respondents/ claimants that respondent Nos.5 & 6 owner of the vehicles remained exparte before the Tribunal, even impleaded in this appeal is no way fatal to the maintainability of appeal vide ***Meka Chakra Rao vs Yelubandi Babu Rao***[1] and the same is recorded.

4) Heard and perused the material on record.

5) Ex.R3—MVI report issued by Regional Transport Authority having examined by Motor Vehicle Inspector and found the driving license No.1048/77 is in the name of D.Suryanarayana, who is driver of the vehicle of 1st respondent. At the time of accident in question and when called for the particulars, the RTA made an endorsement stating that it is a fake license because the licence No.1048/77 is issued in favour of one V.Venkateswarlu and not to said D.Suryanarayana, is suffice to say the insurer can rebut the evidence adduced on behalf of the claimants showing the so-called D.Suryanarayana has no valid driving licence, at all, whatever he produced is a fake one. The Tribunal went wrong in saying despite said evidence among Exs.B1 to B3, particularly Ex.B2 was marked by consent, no more proof is required to corroborate the same. However, as held by the Apex Court in ***National Insurance Company Limited vs Swaran Singh***[2], ***United India Insurance Company Limited vs Lehru***[3]***, Oriental Insurance Company Limited vs Nanjappan & others***[4] ***Kusumlatha and others V. Satbir and Others***[5] ***S.Iyyappan Vs. United India Insurance Company***[6] even the licence is found fake when there is nothing to say

---

[1] 2001 (1) ALT 495 DB
[2] 2004 ACJ 1 (SC)
[3] 2003 ACJ 611
[4] (2004) 13 SCC 224 = 2004 SAR (Civil) 290
[5] AIR 2011 SC 1234 = 2011 (2) SCJ 639
[6] (2013) 7 SCC 62

the owner willfully and deliberately with such conscious knowledge allowed the driver to drive so to exonerate totally. It is also from the fact that once there is a policy covering the risk for violation, the insurer cannot be exonerated but for to pay and recover under Section 168 read with 149 of the Act.

6) Having regard to the above, the appeal is allowed in part, the joint liability of 50% out of the compensation of Rs.1,00,000/- fixed against the respondents 1 and 2 is modified only to the extent of liability of pay and recovery, with the following directions:

The Insurer—2nd respondent to the claim petition shall deposit the said 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 Lehru (supra) and Nanjappan (supra) that the insurer (respondent No.2) 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 MV Act, 1988 and also ask the Tribunal not to disburse the deposited amount to 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 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

Dt.12.09.2016
knl

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.4370 of 2008

Date: 12.09.2016

Knl