HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.696 of 2008

JUDGMENT :

The 2nd respondent-insurer, among the two respondents including the owner of the lorry bearing No.AP 10 T 7555, impugning the award dated 21.11.2006 in M.V.O.P.No.428 of 2003 on the file of the IX Additional District and Sessions Judge (FTC), Krishna at Machilipatnam (for short, 'the Tribunal') maintained by the claimants under Section 163-A of M.V.Act for Rs.4,00,000/- for the accidental death of the deceased Nagamunendra Rao on 06.06.2003, maintained the present appeal.

2. The contention of the appellant-insurer is that the driver himself in the course of employment was negligent, thereby the appellant is not liable to indemnify.

3. Whereas it is the submission of learned counsel for the claimants that the above said contention of appellant is untenable as the death is occurred during the course of employment and negligence of the driver is immaterial to claim compensation by the legal heirs.

4. Heard and perused the material on record.

5. As per the material, the policy is not even an act policy to say only the compensation to be confined under W.C.Act. Apart from, the coverage is available to the claimants either to proceed under W.C.Act or under the M.V.Act by virtue of the wording of Section 167 of the Act and also from the expression of the Apex Court in

National Insurance Company Limited vs. Mastan and another[1], once the policy is not even an act policy and there is coverage of the risk to the driver. Thereby, there is nothing even to interfere with the liability of the insurer so also pay and recovery direction from any imperfect driving licence of the driver, once policy covers the risk, but for to clarify the pay and recovery direction.

6. Accordingly and in the result, the appeal is disposed of. The respondents shall deposit said amount within one month, failing which the claimant can execute and recover. It is made clear from the settled expressions of the Apex Court in **United India Insurance Co. Ltd. V. Lehru**[2] and **Oriental Insurance Company Limited Vs. Nanjappan & Others**[3] that the insurer 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 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

[1] 2006 (2) SCC 641
[2] JT-2003(2) SC 595 = 2003 ACJ 611
[3] (2004) 13 SCC 224=2004-SAR(civil)-290

the balance in fixed deposit in a nationalized bank. Rest of the terms of the award of the Tribunal holds good.

7. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

28th September 2016

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