HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

<u>M.A.C.M.A. No.176 of 2010</u>

<u>JUDGMENT</u>:

The 2nd respondent—insurer among two respondents including owner of the auto bearing No.AP 7 TT 3816, maintained the appeal impugning the award dated 24.01.2009 passed in M.V.O.P. No.361 of 2007 on the file of Motor Vehicles Accidents Claims Tribunal-cum-I Additional District Judge, Guntur, (for short 'the Tribunal') which is maintained by the claimants, who are none other than parents of the deceased by name Devarapalli Suresh for compensation of Rs.2,00,000/- with the averments that he was while going in the said auto on 17.03.2007 due to rash and negligent driving of the auto driver, the auto turned turtle and he succumbed to injuries in the accident. From the contest of respondents, the Tribunal awarded Rs.1,72,000/- with interest at 7.5% per annum fixing joint liability against respondents.

2) Heard learned standing counsel for insurer. Perused the material on record.

3) From the contest of respondents particularly 2nd respondent—insurer before the Tribunal was that the driver has no valid driving licence apart from other contentions that the owner having valid driving licence did not produce the same and from the evidence of RW.2—employee of RTA, RW.1—employee of insurer deposed in this regard with reference to Ex.B2—attested copy of driving licence saying the auto driver has LMV non-transport. The Apex Court virtually observed the distinction between transport and non-transport. In fact, that is different from possessing LMV transport and when compared to

LMV non-transport, the transport licence enables to ply in public places and non-transport is only for personal use and not for hire purpose.

4) The provisions of M.V Act clearly show initially non-transport licence being issued, after completion of statutory period and after passing of test, then only eligibility arises for transport licence to consider and if otherwise eligible.

5) Once such is the statutory distinction from the provisions, it cannot be ignored of non-transport as good as transport though under non-transport and transport auto can be driven when it changes the nature of use and purpose of driving. Thus, the Tribunal was incorrect in fixing joint liability and ought to have been fixed pay and recovery.

6) Accordingly and in the result, the appeal is partly allowed by modifying the joint liability into pay and recovery with the following terms:

The Insurer—2nd respondent to the claim petition shall deposit the said amount of Rs.1,72,000/- with interest at 7.5% per annum within one month, failing which the claimants can execute and recover. It is made clear from the settled expressions of the Apex Court in ***United India Insurance Company Limited vs Lehru***[1], ***Oriental Insurance Company Limited vs Nanjappan & others***[2] ***Kusumlatha and others V. Satbir and Others***[3] that the insurer is entitled to recover the deposited amount, 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

[1] 2003 ACJ 611
[2] (2004) 13 SCC 224 = 2004 SAR (Civil) 290
[3] AIR 2011 SC 1234 = 2011 (2) SCJ 639

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 M.V 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. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.17.11.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.176 of 2010

Date: 17.11.2016

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