

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.621 OF 2008

JUDGMENT:

The 2nd respondent out of two respondents including owner of the jeep bearing No.AP 28 L 3908 maintained the appeal impugning the award of the tribunal in O.P.No.1410 of 2005 dated 21.08.2007 for the claim maintained by the three claimants no other than wife and two minor children of late Anil Kumar(deceased) u/ sec. 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), for a claim of Rs.10,00,000/- since awarded by the tribunal of Rs.7,32,000/- with interest at 7.5%~~p~~.a., against both the respondents even it is contested by the 2nd respondent- Insurer that the driver was not having a valid driving license and the same is suggested in the cross-examination of the P.W.1 and also the employee of the Insurer R.W.1 and placed reliance on the contents of the chargesheet Ex.A.3, from the tribunal holding no R.T.O. was chosen to be examined by the Insurer to discharge the burden thereby the insurer is jointly liable to pay compensation; with the contentions in the grounds of appeal that the driver was not having any valid driving license at the time of the accident and the same is also proved by the chargesheet, hence to exonerate him.

2. Heard and perused the material on record.

3.The own document of the claimants covered by the Ex.A.2 charge sheet itself is showing that the driver was not possessing valid driving license at the time of accident and even Ex.A.4 MVI report was also silent about valid driving license. Once that evidence is rebutted by the evidence of the respondents including by relying upon the documents of the claimants, tribunal should have been ordered pay and recovery from nothing to rebut by the owner of the vehicle and by the

claimants even. Thus, the joint liability fixed by the tribunal is to be modified as to pay by the Insurer initially and then to recover from the owner of the vehicle.

4. Accordingly and in the result, the appeal is allowed in part by confirming the quantum of compensation awarded by the tribunal, however by modifying the liability from joint liability to pay and recovery, directing the appellant-Insurer to pay first and then to recover. The respondents shall deposit said amount within one month from today, failing which the claimants can execute and recover. It is made clear that the insurer is entitled while depositing the amount payable, if not deposited or paid any amount so far, to deposit and 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 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. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 16.09.2016
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