HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.4318 of 2008

JUDGMENT:

The 2nd respondent—insurer among the two respondents including the owner of auto bearing No.AP 31 U 8911, in M.V.O.P. No.150 of 2006 on the file of Motor Accidents Claims Tribunal-cum-District Judge, Visakhapatnam (for short 'the Tribunal') maintained by two claimants, who are wife and son of deceased by name Sanyasayya under Section 166 of Motor Vehicles Act, 1988 (for short 'M.V Act') for a compensation of Rs.2,00,000/-, for the accidental death of the deceased on 22.11.2004, in awarding compensation of Rs.1,00,000/- with interest at 7.5% per annum from the date of petition till the date of deposit, maintained the appeal mainly on the quantum of compensation awarded by the Tribunal as excessive and exorbitant and to reduce the same in awarding just compensation.

2) The contentions in the grounds of appeal are mainly from the evidence of RWs.1 and 2 with reference to Exs.B1 to B3 and Ex.X1 that the driver of the auto instead of possessing LMV transport got only LMV non-transport and since no valid driving license, there is a violation of permit, terms and conditions of license, thereby, the insurer is liable to be exonerated and the Tribunal did not properly consider the same.

3) Whereas it is the contention of the learned counsel for the claimants/ respondents 1 and 2 that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere but for no cross objections to enhance the compensation, hence to dismiss the appeal.

4) Heard learned standing counsel for appellant and learned counsel for respondents. Respondent No.1 to the claim petition remained exparte before the Tribunal and even impleaded in this appeal as respondent No.2 no way fatal to the maintainability of the appeal vide ***Meka Chakra Rao vs Yelubandi Babu Rao***[1] Perused the material on record.

5) The very finding of the Tribunal at para No.9 from the appreciation of the evidence of RWs.1 and 2 and Exs.B2 and 3, in particular, clearly speak that the driver was having only LMV non-transport instead of LMV transport and the provisions of M.V Act, are very clear that for a person having LMV non-transport, getting LMV transport is not an automatic but for after qualified experience and on passing the test. Here the driver possessed only LMV non-transport but drives a transport vehicle, which is one of the violation of the conditions of the policy and permit and thereby there is force in the contention in the learned counsel for appellant/ Insurer. However, the insurer cannot be totally exonerated, once the policy covers the risk but for pay and recovery even from the three judge bench expression of the Apex Court in ***National Insurance Company Limited Vs. Swaran Singh***[2] that once placed reliance by the Tribunal and the same is also reiterated by subsequent expressions particularly ***S.Iyyappan Vs. United India Insurance Company***[3] ***and Kusumlatha V. Satbir***[4]**.**

6) Accordingly and in the result, appeal is partly allowed upholding the quantum of compensation and rate of interest but for modifying the joint liability of owner and insurer (respondents 1 and 2

[1] 2001 (1) ALT 495 DB
[2] (2004) 3 SCC 297=2004-ACJ-1
[3] 2013 (7) SCC 62
[4] AIR 2011 SC 1234 = 2011 (2) SCJ 639

to the claim petition) only to the extent of pay and recovery with the following pay and recovery directions:

The Insurer shall deposit 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 ***United Insurance Co. Ltd Vs. Lehru***[5] ***& Oriental Insurance Company Limited Vs. Nanjappan***[6] 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 the M.V 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 or for a period of three months from the date of receipt of the order. 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) Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.01.09.2016
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[5] JT-2003(2)SC-595=2003-ACJ-611=2003-ACT-611(SC)
[6] 2004 (13) SCC 224=2004-SAR(civil)-290