HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.4623 of 2008

JUDGMENT:

The injured claimant of O.P.No.681 of 1999 on the file of Motor Accidents Claims Tribunal-cum-II Additional District Judge, Nellore, maintained under Section 166 of Motor Vehicles Act (for short 'the Act') for Rs.1,04,000/- against the owner and insurer of the tractor and trailer bearing Nos.AP-26-E-173 and CTN-FA-040, from the contest by 2nd respondent insurer from owner remained exparte, allowed the claim for Rs.40,979/- with interest @ 7.5% per annum by deducting what the owner paid to the claimant of Rs.15,000/- for the balance of Rs.26,000/- by rounding the amount, by impugning the said quantum as utterly low and exoneration of the insurer is unsustainable, maintained the present appeal. The 1st respondent owner of the vehicle since remained exparte represented not necessary party to the appeal vide **Meka Chakra Rao V. Y.Babu Rao**[1] and the same is recorded.

Learned counsel for the 2nd respondent insurer since represented by S.Naresh Birapeneni, learned Standing Counsel. Heard learned counsel for the appellant and insurer.

It is the contention of the learned counsel for the appellant that once the Section 147 proviso (c) of the Act covers the risk for owner or attender of goods in the goods vehicle even for agricultural purpose for what is taken the aqua fish culture part of agricultural purpose, exoneration of the insurer as unsustainable, and to allow the appeal as prayed for. Whereas it is the contention by the learned counsel for the appellant referring to Sections 146

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[1] 2001(1) ALT 495 (DB)

and 147 of the Act, it speaks that owner or attender of goods even to travel in the tractor and trailer single seating capacity unless additional premium is as per the Section 147 sub Section (1) proviso (2) to undertake a contractual liability insurer cannot be made liable thereby the Tribunal is right in exoneration.

Heard and perused the material on record.

Now coming to the quantum of compensation, the injuries sustained by the claimant is complete tear of the main bronchus and following blunt trauma to chest with left lung expansion and failure as per the evidence of PW.4 the Doctor it was repaired from the seriousness of the injury by conducting operation and 09.06.1999 of the accident dated 01.06.1999, and lungs function was restored to normalcy. The Tribunal observed that the nature of injuries sustained and period of treatment undergone by the claimant not in dispute even by the 2nd respondent insurer of the claim petition. The Tribunal referring to medical bills under Ex.A7 awarded for the medical expenses incurred of Rs.26,000/- and Rs.1,000/- towards transport charges, Rs.10,000/- towards pain and sufferance from said grievous injuries, Rs.2,000/- extra nourishment and attendant charges, nearly Rs.2,000/- towards loss of earnings for 1 month, evidence on record shows he undergone treatment for a period of 1 ½ months nearly for the injury. As the said injury is grievous in nature from tear to main bronchus of the left lung from the chest injury associated with it a minimum of Rs.20,000/- is the just compensation for the injury apart from Rs.26,000/- medical expenses as awarded by the Tribunal upholding besides Rs.9,000/- towards attendant charges, extra nourishment etc., Rs.55,000/- is the just compensation after reducing Rs.15,000/- received by the claimant from 1st respondent owner, it comes to Rs.40,000/- to enhance from Rs.26,000/- while upholding interest.

Now coming to the liability of the insurer, in fact the Apex Court in **National Insurance Co. Ltd. vs Bommithi Subbhayamma And Ors.**[2] held that the Act policy covers the owner of goods or his authorized representative under Section 147 of the Act, however it is not the intention of the legislature to provide for liability of the insurer with respect to passenger and especially gratuitous passengers without any contractual including of liability. The expression of three judge bench in **National Insurance Co vs Prembai Patel And Others**[3] is also clear in this regard no doubt the vehicle in question for agricultural purposes, the permit obtained and the claimant's claim is 5 bags acqua feed he was transporting by engaging the vehicle and the same is covered by bill and in respect of which he purchased from Anil Aqua Feeds for Kaku Ramana Reddy. Once it is proved that he is the owner of the goods travelling, the question to be considered is can he allow the vehicle to be used for hire to let out for other for commercial purpose. No doubt same is violation of permit and policy conditions and even therefrom as per the submission of the learned counsel for the insurer, the insurance company is liable to be exonerated. However once policy covers the risk as referred supra and even there is violation of permit and policy, the insurer has to pay and recover.

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[2] 2005 ACJ 721
[3] 2005 (2) TAC 289

Having regard to above, the appeal is allowed in part by enhancing the compensation from Rs.26,000/- to Rs.40,000/- by upholding rate of interest and by setting aside the total exoneration of the insurer fixing liability to the extent of pay and recover by the insurer with the following conditions:-

It is made clear from the settled expressions of the Apex Court in ***United India Insurance Co. Ltd. V. Lehru***[4] & ***Oriental Insurance Company Limited Vs. Nanjappan & Others***[5] 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 the balance in fixed deposit in a nationalized bank. Rest of the terms of the award of the Tribunal holds good.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 08.09.2016
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[4] JT-2003(2) SC 595 = 2003 ACJ 611
[5] (2004) 13 SCC 224=2004-SAR(civil)-290