

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.626 of 2012

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JUDGMENT:

The 3rd respondent-Insurer among the three respondents including the driver and owner of jeep bearing No.AP-1-T-9327 in O.P.No.260 of 2009 on the file of the Chairman, Motor Accidents Claims Tribunal–cum-I Addl. District Judge, Karimnagar (for short, ‘the Tribunal’), maintained claim under Section 166 of the Motor Vehicle Act,1988 (*for short, ‘the Act’*), for compensation of Rs. 2,00,000/- (Rupees two lakhs only) by the claimants-parents of the deceased girl by name Jella Sowjanya for the death of Sowjanya in the accident dated 04.06.2008 while she along with some others was travelling in the jeep bearing No.AP-01-T-9327 driven by the 1st respondent of the crime petition belongs to the 2nd respondent of claim petition insured with the 3rd respondent(appellant herein) but the tribunal by its award dated 19.08.2011 granted 1,94,000/- with interest at 7.5% p.a. by fixing liability against respondent Nos. 1 to 3, holding that the appellant herein though proved by examining R.Ws.1 and 2 his employees herein who stated that the driving license of the R.1 is fake and the appellant herein got Ex.B.8 extract of driving license obtained from Additional Licensing Authority, Warangal, and found the same is standing in the name of Md.Zaheer Ahmed but the name of the driver(R.1 of claim petition) is Kurising Satish and in spite of notice to him returned unserved and even remained exparte before the tribunal and R.2 owner of the crime vehicle failed to produce the driving license of the R.1, held that it is not known as to what is the driving license number of R.1 Kurising Satish as was not charged with the offence for not having driving license in the chargesheet and therefrom it can be stated that he is having valid driving license at the time of accident and the appellant herein produced the extract of driving license of some third person which is not concerned with the R.1.

2. Impugning the same, the present appeal is filed by the 3rd respondent-Insurer of claim petition with the contentions in the grounds of appeal that the tribunal ought to have seen that the driving license of the driver-R.1 of the crime vehicle is fake one and not a valid and once and the tribunal failed to observe that when the driver of the offending vehicle drove the vehicle without valid license, the liability of the claim should fall on the owner and driver of the vehicle and not on the Insurer, hence to set aside the award by allowing the appeal.

3. The appellant preferred the present appeal along with the petition MACMAMP No.333 of 2012 seeking to condone the delay of 25 days in filing the appeal and the same is condoned. The registry to number the appeal if it is otherwise in order and the appeal is taken up for hearing.

4. Heard the learned counsel for the appellant. The notice served on the respondent Nos. 1 and 2-claimants but failed to attend and the 3rd respondent-owner of the crime vehicle also served but failed to attend (against whom the appeal was dismissed for default and later restored) even impleaded in the appeal no way fatal for the maintainability of the appeal and notice sent sufficient proof to draw presumptions under Section 27 of the General Clauses Act, hence taken as heard and perused the material on record.

5. It is not in dispute the quantum of compensation but for liability. A perusal of the evidence on record shows Ex.B.8 Extract of Driving License from its particulars shows not in the name of Kurusingh Satish S/o Sudharshan but in the name of Md. Zaheer Ahmed and the same is also proved from the evidence of R.W.2 Senior Assistant of R.T.A. who categorically deposed that the Ex.B.8 is in the name of one Zaheer Ahmed but the same does not stand in the name of Kurusingh Satish. In his cross-examination, he admitted that in Ex.A.4 M.V.I. report the driving license was shown in the name of R.1 Kurusingh Satish but in column No.17 under the particulars of driver's license it is mentioned as 'Not Produced'. From it, when the driving license is not

produced, producing the particulars of driving license of R.1 does not arise. When the original record shows the driving license is in the name of Md.Zaheer Ahmed, it is suffice to say, the R.1 is having fake license, though notices issued to the driver and owner even returned unserved and they failed to produce, the tribunal totally missed this important aspect and wrongly fixed liability on the Insurer. The appellant counsel placed reliance on the expression of the Apex Court in **United India Insurance Company Limited Vs. Sujata**^[1] saying once the license is fake, the insurer cannot be made liable for violation of terms of the policy. But as per the expressions of the Apex Court in **National Insurance Company Limited Vs. Swaran Singh**^[2], **Oriental Insurance Company Limited Vs. Nanjappan & Others**^[3] **Kusumlatha V. Satbir**^[4] and also in later expression **S.Iyyappan Vs. United India Insurance Company**^[5] it is very clear that instead of total exoneration of the Insurer, it is just to award pay and recover once the policy covers risk of third party.

6. In the result, the appeal is allowed in part by modifying the liability fixed by the tribunal on respondents 1 to 3, to pay and recover by the Insurer of the crime vehicle-the appellant herein. The appellant-Insurer 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 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 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. 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: 09.02.2016
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[\[1\]](#) 2013 3 ACJ 2129
[\[2\]](#) (2004) 3 SCC 297=2004-ACJ-1
[\[3\]](#) (2004) 13 SCC 224=2004-SAR(civil)-290
[\[4\]](#) AIR 2011 SC 1234 = 2011 (2) SCJ 639
[\[5\]](#) (2013) 7 SCC 62