

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.Nos.2818, 2903 and 2904 of 2007

COMMON JUDGMENT:

All the three appeals are the outcome of the same accident, out of two claims by the respective injured covered by M.V.O.P.Nos.603 and 555 of 2004. The tribunal, even on behalf of the insurer contested the matter and adduced evidence through RW.1 including by filing Exs.B1 to B3 of which Ex.B2-driving license and Ex.B3-R.C. to show that the vehicle in question is a Light Motor Vehicle-Transport, which is jeep bearing No.AP 04U 4428 of the 1st respondent insured with the 2nd respondent, and the driver from Ex.B2 got only Light Motor Vehicle-Non-Transport, without considering or disclosing the evidence in the two awards in this regard fixed joint liability in awarding compensation of Rs.44,300/- in M.V.O.P.No.603 of 2004 and Rs.3,93,500/- in M.V.O.P.No. 555 of 2004 with interest at 7.5% p.a. and the insurer maintained appeals in both the claims saying the tribunal gravely erred in fixing liability on the insurer despite the driver having only Light Motor Vehicle-Non-Transport and not even Light Motor Vehicle-Transport, thereby, there is violation of permit from the

permitted policy conditions and otherwise it is a case for pay and recovery and not to fix the joint liability.

2. So far as MACMA No.2818 of 2007 is concerned, it is impugning the quantum of compensation of Rs.44,300/- as utterly low, the claimants filed the appeal.

3. Heard commonly all the three appeals and perused the material on record.

4. So far as quantum of compensation of Rs.44,300/- is utterly low or excessive concerned, even taken one grievous injury, which is a fracture injury and one simple injury, by considering the same the tribunal awarded Rs.44,300/-. Now it is pointed out that the loss of earnings for two months awarded at Rs.4,000/- is utterly low. Even the same is enhanced to Rs.2,700/-p.m. more it comes to Rs.47,000/- is the just compensation and beyond that there is nothing to enhance.

5. However, coming to the two appeals of the insurer regarding the exoneration sought for concerned, the law is fairly settled that once the policy covers the risk, the insurer cannot be escaped from liability totally but for to pay and recovery from what the driver possessed the Light Motor Vehicle-Non-Transport instead of Light Motor Vehicle-Transport, which is not an automatic but after for two years possessing of Light Motor Vehicle-Non-Transport after

passing of the test conducted only eligible for Light Motor Vehicle-Transport.

6. Having regard to the above, the tribunal ought to have been issued for pay and recovery.

7. Accordingly and in the result, all the three appeals are allowed as follows:

i) MACMA No.2818 of 2007 is allowed by enhancing compensation from Rs.44,300/-to Rs.47,000/-. In other respects, the award of the tribunal holds good.

ii) MACMA Nos.2903 and 2904 of 2007 are allowed and the finding of the tribunal 'the joint liability' is set aside and modified as 'pay and recovery' with the following directions:

The insurer shall deposit the said amounts within one month from the date of receipt of a copy of this order, failing which the claimants can execute and recover. It is made clear from the settled expressions of the Apex Court in *United India Insurance Co. Ltd. V. Lehu*¹ and *Oriental Insurance Company Limited Vs. Nanjappan & Others*² that the insurer is entitled, while depositing the amounts payable, if not deposited or paid any amounts so far to deposit the balance amount to approach the tribunal to direct the RTA concerned not to register any transfer of the

¹ JT-2003(2) SC 595 = 2003 ACJ 611

² (2004) 13 SCC 224=2004-SAR(civil)-290

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 Motor Vehicles Act, 1988, and also ask the tribunal not to disburse the deposited amount of the respective claimant (but for to invest in a bank) till such attachment order is made. However, after the same, the tribunal shall not withhold the amounts of the claimant, if there is any necessity to permit for any withdrawals but for to invest the respective balance amounts separately in fixed deposits in a nationalized bank. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

8. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:17.09.2016
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