HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.361 of 2010

JUDGMENT:

The 3rd respondent insurer, among the 3 respondents including the driver and owner of the auto bearing No.AP-16-Y-163, impugning the award of the Tribunal in O.P.No.365 of 2006 dated 20.10.2009 of the claim maintained by the injured one of the passengers among 6 in number of the driver of the 3 seater LMV transport auto, of the accident dated 27.01.2003, claim under Section 166 MV Act for Rs.3,00,000/-, since awarded by the Tribunal of Rs.80,000/- fixing joint liability with 7.5% per annum, maintained the appeal with the contention that the Tribunal gravely erred in awarding compensation even there is violation of permit in allowing 6 persons to travel as 6+1 (driver) against 3+1, thereby sufficient to exonerate apart from the 3 claims already satisfied in relation to 2 deaths and one injury claim by the insurer as per the policy covering maximum liability and thereby no more further liability that was not properly considered by the Tribunal, hence to exonerate the insurer.

Learned counsel for the insurer reiterated the same. Whereas the learned counsel for the claimant submits that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere, hence to dismiss the appeal.

So far as overloading contributed to the accident concerned, it is definitely for 6+1 travelling against the seating capacity of 3+1 per se contributed to the accident by that overloading though otherwise mere overloading is not a ground to exonerate the liability. However, coming to the quantum even taken 25% from said over loading what the Tribunal awarded of Rs.80,000/- no way requires interference.

Coming to the exoneration of the insurer otherwise from satisfaction of 3 claims concerned, the Apex Court in **National Insurance Company Limited Vs. Anjana Shyam**[1], categorically held that where there are number of claims beyond the policy limit, the insurer is liable to indemnify to the extent of policy covered risk of the highest claims and such compensation to be apportioned among all claimants in proportion out of the highest claims to be indemnified and the balance in all claimants to be distributed as liability against the owner. Had the insurer approached by the expression, it could have been considered by the Court for such apportionment but for not. No doubt it is the submission that by the time the claims were satisfied of 2003, the O.P. was even filed in this case but for later. Having regard to the above and from the fact that once there is pay and recovery direction issued to the insurer there is nothing to interfere.

Hence, the appeal shall be dismissed that the insurer already indemnified to the extent of policy covering risk for 3 claims including 2 death claims and no more liable, but for not invoked the principle by either of them, it is just instead of fixing joint liability order pay and recover on the owner to pay the claimants.

Accordingly and in the result, the appeal is partly allowed while fixing contribution of the deceased also from the overloading

[1] (2007) 7 SCC 445

of 25% and for the 75% liability the quantum no way requires interference including rate of interest at 7.5% per annum. However, by modifying the joint liability into liability of pay and recovery from the owner with the following pay and recovery conditions:

It is made clear from the settled expressions of the Apex Court in ***United India Insurance Co. Ltd. V. Lehru***[2] & ***Oriental Insurance Company Limited Vs. Nanjappan & Others***[3] 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: 03.11.2016
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[2] JT-2003(2) SC 595 = 2003 ACJ 611
[3] (2004) 13 SCC 224=2004-SAR(civil)-290