HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A. No.298 of 2009

JUDGMENT :

The 2nd respondent-insurer among two respondents including owner of Crime auto bearing No.AP 02 U 5629 of O.P. No.124 of 2007 maintained against them by the three claimants under Section 163-A of the Motor Vehicles Act for Rs.2,00,000/- since allowed by the Tribunal with joint liability awarding compensation of Rs.1,27,000/- with interest at 7.5% p.a. despite the contest by the insurer in the counter vis-à-vis the evidence through R.W-1 employee of the R.T.A office and Exs.B-1 to B-4 which includes policy in force and the permission issued by R.T.O, Ananthapur for the vehicle four days after the accident in 2006 and by the time of accident there is no permit, the appeal is filed with the above contentions saying Tribunal gravely erred in exonerating the factum of as on the date of accident there is no valid permit and went wrong in observing wrongly of the permit extends upto 19.12.2011 from 20.12.2006 under Ex.B-2 ignoring the fact that the accident was before 16.12.2006. Hence sought for exoneration of the insurer. Whereas, it is the contention of the learned counsel for the claimants/respondent Nos.1 to 3 from the owner who remained exparte before the Tribunal and even impleaded and served failed to attend and taken as heard, that the award of the Tribunal holds good and the permit dates back to the expiry though issued subsequent to the accident and thereby the Tribunal is right and there is nothing to interfere.

2) Heard and perused the material on record. The only point for consideration is whether the violation of the policy conditions from non possessing of valid permit as on the date of accident proved by the insurer exonerates the insurer and if so the Tribunal in fixing joint liability is not correct, for this Court to interfere.

3) Once there is a policy covering the risk, the insurer cannot avoid its liability to indemnify but for if at all there is a grave violation to pay and to recover. No doubt, the expressions in ***National Insurance Company Limited Vs. Swaran Singh & Others***[1] (three judges' bench) referring to earlier expression in **United India Insurance Co. Ltd. V. Lehru**[2] or the subsequent expression following it in ***Oriental Insurance Company Limited Vs. Nanjappan & Others***[3] among several other expressions including **Kusumlatha and others V. Satbir and Others**[4] and **S.Iyyappan Vs. United India Insurance Company**[5] all speak in one line by violation but for to pay and recover, insurer cannot be exonerated. Once such is the case and the claimant/respondents

could not show any proposition or provision to say a subsequent granting of permit dates back to the earlier expiry date of the permit to read in between there is a deemed permit as on the date of accident, once without permit the vehicle is applied its one of the violations which entitle the insurer on payment indemnifying the owner to the claimants to recover.

4) Accordingly and in the result, the appeal is partly allowed by converting the payment of compensation from joint liability into pay and recovery. The respondents shall deposit said amount within one month, failing which the claimant can execute and recover. It is made clear from the settled expressions of the Apex Court in **Lehru** (supra) & **Nanjappan** (supra) 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. There is no order as to costs. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

5) Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

28.01.2016
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[1] (2004) 3 SCC 297=2004-ACJ-1

[2] JT-2003(2) SC 595 = 2003 ACJ 611

[3] (2004) 13 SCC 224=2004-SAR(civil)-290

[4] AIR 2011 SC 1234 = 2011 (2) SCJ 639

[5] (2013) 7 SCC 62