HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A. No.3003 OF 2004

JUDGMENT:

The appellant—Insurer among two respondents including owner of the lorry bearing No.AP 16 V 4237 to the claim, maintained by the injured claimant in O.P. No.842 of 1998 on the file of Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, at Guntur (for short 'the Tribunal') under Section 166 of the Motor Vehicle Act, 1988 (for short 'M.V Act') for claiming compensation of Rs.50,000/- and the Tribunal passed common award on 11.02.2002 in M.V.O. P. Nos.838 of 1998 to 842 of 1998 fixing joint liability against respondents respectively and in this case on hand concerned awarded Rs.50,000/- with interest at 9% per annum.

2) It is the contention of the insurer that the Tribunal gravely erred in fixing joint liability on the insurer despite not having valid driving licence particulars that is proved from the evidence of RW.1 coupled with Exs.B2 and B3—certificate issued by Licensing Authority, Vijayawada and returned registered cover. The quantum of compensation and rate of interest awarded by the Tribunal is excessive, hence to reduce.

3) Whereas it is the contention of the counsel for claimant that the award passed by the Tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere. Respondent No.2 herein is the owner of the vehicle remained ex parte before the Tribunal and even impleaded in the appeal dismissed for default is no way fatal to the maintainability of the appeal vide ***Meka Charkadhara Rao vs Yelubandi Babu Rao***[1] and the same is recorded.

4) Heard learned standing counsel for appellant and learned counsel for respondent/ claimant. Perused the material on record.

5) So far as the quantum concerned, there is nothing to interfere but for to reduce the rate of interest from 9% per annum to 7.5% per annum vide three judge bench expression of the Apex Court in ***Rajesh vs Rajbir Singh***[2].

6) So far as the joint liability fixed on the insurer to indemnify the owner, there is a clear evidence that also discussed by the Tribunal in the common award at para Nos.10 to 12 that the MVI report no where speaks the license particulars and charge sheet also no where speaks license particulars and it could not be known how the insurer could bring the particulars in filing Ex.B1—policy, Ex.B2—certificate issued by RTA of Vijayawada and Ex.B3—returned registered notice issued to owner unclaimed. In fact, the evidence on record of RW.1 with reference to Ex.B2 clearly speaks the license particulars furnished by the claimant of license bearing No.1824/K/1993 belongs to one Dasari Apparao of Vijayawada whereas driver of the vehicle involved and undisputedly one Yacob claimed as if he was given licence under that number. However, the Tribunal observed how the owner could get the particulars in rejecting the contention or in fixing joint liability. In fact from the evidence on record and notice returned unclaimed of the owner for number of the license to furnish and same was not complied and what particulars furnished with reference to the driver as if license No.1824/K/1993 of Yacob, who belongs to third part and what the Tribunal gravely erred in fixing joint liability. No doubt, there is nothing to show that owner intentionally and deliberately allowed the driver and the fake license but for no evidence proved. As per the expressions of the Apex Court in ***United Insurance Co. Ltd Vs. Lehru[3] & Oriental Insurance Company Limited Vs. Nanjappan & Others***[4] the insurer whatever exonerated from liability but for pay and recovery so also from the expression of the Apex Court in ***National Insurance Company Limited Vs. Swaran Singh & Others[5] S.Iyyappan Vs. United India Insurance Company[6] Kusumlatha and others V. Satbir and Others[7].***

7) Accordingly and in the result the appeal is partly allowed by setting aside the joint liability to the extent of pay and recovery on the insurer. The insurer shall deposit said amount within one month from the date of the receipt of the order, 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 the M.V 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. No order as to costs.

8) Miscellaneous petitions, pending if any in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.22.02.2016
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[1] 2001 (1) ALT 495 DB

[2] 2013 ACJ 1403

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

[4] 2004 (13) SCC 224=2004-SAR(civil)-290

[5] (2004) 3 SCC 297=2004-ACJ-1

[6] (2013) 7 SCC 62

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