**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

***M.A.C.M.A. No.2937 of 2005***

***JUDGMENT:***

The 2nd respondent—insurer among the two respondents including the owner of lorry bearing No.NL 02A 9363, maintained the appeal impugning the award dated 30.03.2005 in M.V.O.P. No.1137 of 2001 on the file of Motor Accidents Claims Tribunal – cum- VIII Additional District Judge, Guntur (for short 'the Tribunal') maintained by respondent herein as sole claimant under Section 166 of Motor Vehicles Act, 1988 (for short 'M.V Act') for a compensation of Rs.1,00,000/-, since awarded with joint liability of Rs.73,000/- with interest at 9% per annum for recovery from the owner subject to payment to the claimant by the insurer.

2) Heard and perused the material on record.

3) The contentions in the grounds of appeal in support of the counter filed by the insurer before the Tribunal was that the injured was a midway unauthorized passenger of the goods carriage and the Tribunal gravely erred in fixing liability on the insurer for there is no coverage of policy under Ex.B1.

4) Respondents 1 and 2 i.e., claimant and owner of vehicle even served failed to attend hence taken as heard. Perused the material on record, including Ex.B1 policy which covers the risk of non-fare passengers under IMT 13 and 14 and persons employed for loading and unloading under IMT 17. The accident was dated 03.08.2001. The policy was in force since issued on 18.03.2001 and valid till 17.03.2002 but for to cover the risk on not to decide. As per the claim petition averments, the injured and others boarded the lorry having paid the necessary fare and while traveling when they reached near the petrol bunk of Pedanemalipuri, due to rash and negligent driving of lorry driver dashed the road side tree for which he sustained injuries, from that the policy no way covers the risk. It is not even a case of fixing any liability pursuant to the policy on the insurer prior

to the expression of the Apex Court in ***New India Assurance Company Limited vs Asha Rani***[1][2] by applying the principle laid down in ***National Insurance Company Limited vs Baljit Kaur and others***[3] to fix any liability to pay and recover, as awarded by the Tribunal dated 30.03.2005. In Baljith Kaur (supra), it is made clear by the Constitution Bench that the law laid down in Asha Rani (supra) is prospective in operation to say applies to the claims pending irrespective of the date of accident prior to the expressions. Once such is the case, there is no risk covered by the policy for passengers and thus suffice to say, the Tribunal erred in fixing liability on the insurer to pay and recover instead of fixing liability only on the owner of the vehicle.

5) Accordingly and in the result the appeal is allowed confirming the quantum of compensation awarded by the Tribunal and reducing the rate of interest from 9% per annum to 7.5% per annum from the date of appeal till realisation, however, by fixing liability only on the owner of the vehicle. It is made clear as per the expression of the Apex Court in ***United India Insurance Company Limited vs Laxmamma***[4] whatever the amount paid or deposited by the Insurer and permitted to withdraw by the claimant, the insurer has to recover not from the claimant but from the owner of the vehicle (insured) and whatever amount lying in deposit and not permitted to withdraw the insurer is entitled to file cheque petition and receive back the same. There is no order as to costs.

6) Consequently, miscellaneous petitions, if any pending in this Appeal shall stand closed.

**Dr. B. SIVA SANKARA RAO, J**

Dt.15.07.2016
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**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

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**M.A.C.M.A. No.2937 of 2005**

**Date:15.07.2016**

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[1] 2003 (2) SCC 223

[2] 2012 (5) SCC 234

[3] 2004 ACJ 428

[4] 2012 (5) SCC 234