HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.834 OF 2016

JUDGMENT:

The 2nd respondent—insurer filed this appeal having been aggrieved by the order passed on 01.10.2010 in O.P. No.323 of 2007 on the file of Motor Accidents Claims Tribunal-cum-V Additional District Judge (FTC), Kurnool at Nandyal (for short, 'Tribunal') awarding compensation of Rs.1,09,800/- with interest at 6% per annum against Rs.2,00,000/- for the injuries sustained in the motor accident dated 25.05.2007 stating that while he was travelling in auto bearing No.AP 21 W 7453, due to the rash and negligent driving of the driver of the auto, he lost control and the auto turned turtle and sustained injuries.

2) Heard learned counsel for appellant and also learned counsel for respondent No.1/ claimant. Respondent No.2 herein is the respondent No.1 to the claim petition remained exparte before the Tribunal even impleaded in the appeal dismissed for default, which is no way fatal to the maintainability of the appeal vide ***Meka Charkadhara Rao vs Yelubandi Babu Rao***[1] and the same is recorded.

3) So far as the contention of the insurer that driver not having valid driving licence among other contentions, even the insurer proved from the evidence of RWs.1 and 2 including Ex.B1—policy and Ex.B2-driving licence, Ex.B3—copy of notices issued to the owner and driver to produce the licence not complied with as unserved returned and the RTA through RW.2 deposed that the auto is passenger transport auto and the driver got only non-transport driving licence and however, held it makes no difference in driving the auto and in fixing joint liability now impugned in the grounds with the contentions that the Tribunal ought to have considered exoneration of the insurer for violation of the policy terms, the Tribunal should have seen that the

entitlement to the driving of a transport LMV is not an automatic from LMV non-transport but for complying with the condition as required under Section 9 and 10 of the M.V Act, the minimum experience after LMV non-transport to convert as transport that too after qualifying in the test to be conducted and if not eligible after lapse of time to further participate and once that is the requirement, the Tribunal gravely erred in saying it makes no difference thereby to exonerate the insurer. The law is fairly settled that on the ground of imperfect licence as one of the terms of the policy the insurer cannot be exonerated from the liability and entitled to pay and recovery vide ***National Insurance Company Limited Vs. Swaran Singh & Others***[2] ***S.Iyyappan Vs. United India Insurance Company***[3] ***and Kusumlatha and others V. Satbir and Others***[4]***.***

4) Accordingly and in the result, the appeal is partly allowed by modifying the joint liability to pay and recovery with following terms:

The Insurer shall deposit said amount within one month, failing which the claimant can execute and recover. It is made clear that the insurer is entitled, while depositing half of the amount payable for 1st respondent in claim petition, from pay and recovery liability to approach the Tribunal to direct the RTA concerned not to register any transfer of the auto and to seek for attachment of the auto or other property of the insured as an assurance for execution and recovery in the same proceedings or under revenue recovery as per 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. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.05.02.2016
knl

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

M.A.C.M.A. No.834 OF 2016

Date: 05.02.2016

Knl

---

[1] 2001 (1) ALT 495 DB

[2] (2004) 3 SCC 297=2004-ACJ-1

[3] 2013 (7) SCC 62

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