

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.5076 of 2016

IN/AND

M.A.C.M.A.No.122 of 2010

JUDGMENT:

The claimants four in number of O.P.No.1440 of 2007, maintained under Section 166 of the Motor Vehicles Act (for short 'the Act') against the owner and insurer of the bike bearing No.AP 12F 4457, for a compensation of Rs.6,00,000/- for death of wife of the 1st claimant by name, J.Laxmi, and the tribunal having held that the driver has no driving license and particulars not produced, exonerated the insurer in fixing liability against owner for Rs.2,17,061/- with interest at 6% p.a. on 11.09.2009, impugning the same on the quantum also, they maintained the appeal.

2. Pending appeal, MACMA MP No.5076 of 2016 is filed which is nothing but only a Xerox copy of the so called driving license issued on 04.10.2006, date of first issue on 26.08.1992 and the date of birth as 06.06.1966 of one Manmohan Bung, who is the 1st respondent to the claim petition. In fact, Ex.A2-charge sheet and Ex.A1-F.I.R., show one Nitin Kumar Bung was the rider of the bike belongs to the 1st respondent. The additional evidence application showing the driving license of the 1st respondent-owner has no relevancy but for if at all

produce the driving license of the rider, if at all available and pleaded to seek interference with the award of the tribunal, that too, when the original license is not even filed, the additional evidence application no way relevant to the lis, the application is liable to be dismissed. However, when a perusal of the record shows the 1st respondent-owner of the vehicle remained ex parte even before the tribunal having not chosen to contest the claimants, if at all to produce, to support the claim to show, by calling for the records of the R.T.A. concerned is the driving license of the rider and it requires oral evidence including consideration of any valid driving license or not. Keeping the appeal pending in asking to file such additional evidence application to call for the records of RTA, when practically serves no purpose, this Court feels just to remand the matter to the lower Court setting aside the award fixing the liability against the owner for Rs.2,17,061/- with interest at 6%p.a. and to permit the claimants to adduce additional evidence to produce and prove the driving license of the rider of the bike and the insurer is also entitled to rebut such evidence including to produce rider has no license at all if otherwise could show for fresh disposal and it is made clear that in the absence of producing the driving license of the rider by the claimants, there can be nothing to fix against

the insurer but for on production and proof by virtue of the order of the remand.

3. Accordingly, the MACMA MP No.5076 of 2016 is dismissed and the appeal is allowed by remanding the matter to the lower Court to decide on merits, as per the above observations. No order as to costs.

4. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:04.11.2016
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