HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA No. 703 of 2008

JUDGMENT :

The 2nd respondent insurer among the two respondents including the owner of the auto bearing No.AP 7 U 9700, impugning the award of the Tribunal dated 21.11.2007 in O.P. No.1059 of 2005 maintained the claim under Section 163-A for Rs.2,00,000/- for the accidental death of the deceased on 11.09.2005 while traveling in the auto which dashed a stationed lorry from behind and turned turtle.

2) The contention of the learned counsel for the appellant as the 2nd respondent before the Tribunal from the 1st respondent remained exparte, is that the driver-cum-owner has no valid driving licence, for having L.M.V non-transport instead of possessing L.M.V transport, the Tribunal referring the expression of the apex Court in *National Insurance Company Limited Vs. Swaran Singh & Others*[1] (3JB) directed to pay and recover in awarding the compensation as prayed for i.e., Rs.2,00,000/- with interest at 7.5%p.a. Impugning the finding on joint liability, with a claim of Tribunal erred in not exonerating the insurer and thereby sought for exoneration of the insurer maintained the

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

appeal. It is the submission of the learned counsel for the appellant-insurer that once owner is the driver, he got conscious knowledge of no driving licence suffice to say there is violation of policy and permit conditions and insurer not liable to indemnify and cannot be made liable to meet the claim jointly with the owner but for to fix the liability on the owner.

3) Whereas, it is the submission of the learned counsel for the claimants from the owner of the vehicle remained expart e before the Tribunal, that the award of the Tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere once Tribunal duly exhausted its discretion.

4) Heard and perused the material on record.

5) In fact, the policy covered the risk of the inmates of the auto when not in dispute, the insurer is liable to pay and recover for violation of policy in driving without driving licence even by the owner-cum-driver and same is also the expression in this Court by the Apex Court in Kusumlatha and others V. Satbir and Others[2], S.Iyyappan Vs. United India Insurance Company[3] referring to Swaran singh supra, leave about the contention of the learned counsel for the

[2] AIR 2011 SC 1234 = 2011 (2) SCJ 639
[3] (2013) 7 SCC 62

claimants/respondents to the appeal that once there is a licence possessed which is of L.M.V, it makes no difference of Transport or non-transport even.

6) Accordingly and in the result, the appeal is disposed of. 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 United India Insurance Co. Ltd. V. Lehru[4] *Oriental Insurance Company Limited Vs. Nanjappan & Others*[5] 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

[4] JT-2003(2) SC 595 = 2003 ACJ 611
[5] (2004) 13 SCC 224=2004-SAR(civil)-290

Tribunal holds good. There is no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

20.09.2016
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