HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.632 of 2010

JUDGMENT:

The claimant is the appellant, 1st respondent is the owner and the 2nd respondent is the insurer of the auto bearing No.AP 7 TT 8171 in the claim maintained under Sections 140, 163-A of the Motor Vehicles Act (for short 'the Act') for a compensation of Rs.1,00,000/-, the tribunal awarded Rs.33,000/- with interest at 7.5% p.a. by fixing liability against the owner-1st respondent vide award dated 30.06.2009 holding that the accident was the result of rash and negligent driving of the driver of the auto saying the said auto came in opposite direction with high speed and hit the auto, in which the petitioner was travelling, as a result he sustained injuries and exonerated the insurer holding that the driver of the auto got light motor vehicle-non-transport license whereas the auto is light motor vehicle-transport. It is impugning the same, appeal is maintained by the claimant.

2. Heard and perused the material on record.

3. Coming to the injuries, PW.1 sustained fracture to the right femur and PW.2-doctor saying there from 20% disability and the tribunal did not believe the same for not mentioning it in the discharge summary. Thus, so far as the quantum is concerned, from the femur fracture, what the tribunal awarded of Rs.33,000/- including attendant and transport charges, extra nourishment and medical expenses requires enhancement to Rs.45,000/-.

4. Coming to the exoneration of the insurer impugned in the appeal is concerned, as per the settled expressions of the Apex Court in National Insurance Company Limited v. Swaran Singh[1] reiterated in subsequent expressions in Kusum Lata v. Satbir[2] and S.Iyyappan v. United India Insurance Company[3], it is a fit case for pay and recovery.

5. Accordingly, the appeal is partly allowed by enhancing compensation from Rs.33,000/- to Rs.45,000/- by setting aside the exoneration of the insurer and fixing liability of pay and recovery, with the following directions:

The insurer shall deposit said amount within one month from the date of receipt of a copy of this order, 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] and *Oriental Insurance Company Limited Vs. Nanjappan*[5] that the insurer is entitled, while depositing the amounts payable, if not deposited or paid any amount so far to deposit the balance amount 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 Motor Vehicles Act, 1988, and also ask the tribunal not to disburse the

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[1] (2004) 3 SCC 297=2004-ACJ-1
[2] AIR 2011 SC 1234
[3] (2013) 7 SCC 62
[4] JT-2003(2) SC 595 = 2003 ACJ 611
[5] (2004) 13 SCC 224=2004-SAR(civil)-290

deposited amount of the 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 withdrawals but for to invest the respective balance amount separately 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.

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

Dr. B. SIVA SANKARA RAO, J

Date:07.12.2016
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