HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A M.P. No.2720 OF 2010

IN/ AND

M.A.C.M.A. No.733 OF 2016

JUDGMENT:

Among three respondents i.e., owner and subsequent owner on whose name the policy stands and the insurer of tractor cum trailor bearing No.AP 21 T 9919 and 9920, insurer filed the present appeal against the order/ award passed on 09.11.2009 in O.P. No.647 of 2006 on the file of Motor Accidents Claims Tribunal-cum-Principal District Court, Kurnool (for short 'the Tribunal'), which is filed by three claimants i.e., 1st wife, 2nd wife and son of the deceased, under Section 166 of M.V Act for Rs.2,50,000/- for the death of deceased Yellappa in the accident dated 05.08.2006 and the Tribunal awarded Rs.2,12,200/- with interest at 9% per annum by fixing joint liability against respondents 1 to 3;

2) The 4th respondent herein is the 1st respondent to the claim petition—owner remained ex parte before the Tribunal and even impleaded in the appeal dismissed for default, which is no way fatal to the maintainability of the appeal vide ***Meka Chakradhara Rao vs Yelubandi Babu Rao***[1] and the same is recorded. Perused the material on record.

3) There is delay of 65 days in filing the appeal and the same is condoned as the reasons assigned are due to

administrative delay in processing the papers to obtain sanction.

4) The appeal is taken up for hearing at request of both parties.

5) Heard learned counsel for appellant—insurer vis-à-vis counsel for claimants—respondents 1 to 3. 5th respondent herein is 3rd respondent to the claim petition, in whose name the vehicle stands and he also did not choose to appear even served, hence taken as heard and perused the material on record.

6) The main grounds impugning the award passed by the Tribunal by the insurer are that there is no premium received under the policy vide Ex.A5—cover note and the Tribunal failed to consider the same in fixing liability even there is no valid policy for the reason of so-called agent issued cover notes 23 in number covered by Ex.B1 as proved from the evidence of RWs.1 to 3 by the insurer including from the other contention of driver of the vehicle Rama Krishna as per Ex.X1 coupled with the evidence of RW.2 got only LMV non-transport but for LMV transport vehicle and the tractor and trailor is registered as LMV transport. The other contention of the insurer is that the quantum of compensation and interest awarded by the Tribunal is excessive and ultimately sought for exoneration.

7) The contention of learned counsel for claimants is

that the award of the Tribunal is just. Hence to dismiss the appeal.

8) The Tribunal, from perusal of the award, considered the entire evidence so far as the liability of insurer under Ex.A5 —cover note concerned admittedly issued by the agent appointed by the Insurance Company, by collecting premium and recovery of the premium collected by the agent of the insurer is interse transaction between the principal and agent for which the insured cannot be suffered much less the third party claimant. So far as that contention, there is nothing to interfere.

9) Coming to other contention that the driver is not having valid driving licence, the Tribunal having gone through the evidence of RWs.1 and 2 coupled with Ex.X1 vis-à-vis from the cross examination suggestions to PWs.1 and 2 that the driver has no valid driving licence, however, observed that it makes no difference of possessing either LMV non transport or LMV transport for the driving skills are one and the same. In fact, without possessing LMV non-transport and without minimum experience thereunder, a person is not entitled to LMV transport and he will be entitled to that only after passing of tests and even if not qualified, he has to appear again for the test after a period of seven days as per Section 9 (5) of M.V Act. It is therefrom to say that getting LMV transport is not automatic like getting LMV non-transport after preliminary test, which further requires experience. 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 but for 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]***.***

10) Having regard to the above, the Tribunal erred in fixing joint liability instead of pay and recovery. So far as the rate of interest is concerned, 9% per annum is excessive and 7.5% per 0annum is just and reasonable as per the three judge bench expression of the Apex Court in ***Rajesh vs Rajbir Singh***[5]***.*** As the compensation awarded by the Tribunal is utterly low, this Court has not chosen to exercise its discretionary power to reduce further.

11) Accordingly and in the result, the appeal is partly allowed by modifying the joint liability to pay and recovery and reducing the rate of interest from 9% per annum to 7.5% per annum. The pay and recovery directions are as follows:

The Insurer shall deposit said amount within one month, failing which the claimants 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 claimants (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 claimants, 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.

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

Dr. B. SIVA SANKARA RAO, J

Dt.29.01.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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[1] 2001 (1) A:T 495 DB

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

[3] 2013 (7) SCC 62

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

[5] 2013 ACJ 1403