THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA MP No.6675 OF 2012

IN/AND

MACMA No.194 OF 2016

JUDGMENT:

Heard. The delay is condoned. The appeal is taken up for hearing at request of both sides.

02. The first respondent is the claimant, served and failed to attend. The second respondent is the owner of the vehicle/ Hero Honda Passion Plus Motor Cycle bearing No.AP 28 BE 5717 remained exparte before the Tribunal and even impleaded in the appeal, notice unserved and in further not taking steps, dismissed for default, since restored and notice sent, returned unclaimed is sufficient service, the same is recorded.

03. Respondents 1 and 2 herein are the claimant and insured. The sole claimant is the husband of the deceased aged about 50 years. The accident was dated 08.02.2007. The Tribunal clearly held that the accident was the result of the rash and negligent driving of the motor cycle bearing No. AP 28 B3 5717 of the first respondent to the claim petition, insured with the claim petition respondent 2 and 3, who are the appellants herein. There is nothing to interfere with the finding of the Tribunal.

04. Coming to the quantum of compensation Rs.1,28,768/- with interest at 7.5 % per annum awarded by the Tribunal that also no way requires interference, if at all cross objections to enhance.

05. Coming to the contention exoneration of the insured from liability, the evidence of R.W.1 with reference to Ex.B.2, MVI report clearly speaks that the driver has no licence at all and he was fined by compounding the offence for not holding driving licence that is recorded in the MVI report in column No.17 of the licence particulars

including compound fee collected on 09.03.2007 and even notice issued to the driver and owner vide Exs.B.3 to B.8, served on the driver and returned of the owner and they failed to produce licence. The Tribunal have held the same is proved, however stated that the insurer cannot escape its liability to the extent of no fault liability and in the operative portion of the judgment the same is not reflected. In fact, there is nothing to show that the owner deliberately allowed the driver of the crime vehicle to drive the vehicle without licence and as such it is not a case for exoneration of the insurer from the liability but for pay and recovery once the policy covered the risk vide decisions in ***National Insurance Company Limited Vs. Swaran Singh & Others***[1]***, Kusumlatha and others V. Satbir and Others***[2] ***and S.Iyyappan Vs. United India Insurance Company***[3]***.***

06. Accordingly and in the result, the appeal is partly allowed, while confirming the compensation, rate of interest, however by fixing the liability on the insured to the extent of pay and recovery with the pay and recovery direction that the respondents shall deposit the said amount within one month, failing which the claimant can execute and recover. It is made clear that the insurer is entitled, while depositing the amount payable, if not deposited or paid any amount so far to deposit the balance 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 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 withdrawal but for to invest the balance in fixed deposit in a nationalized bank.

07. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

27.01.2016
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[1] (2004) 3 SCC 297=2004-ACJ-1

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

[3] (2013) 7 SCC 62