HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA MP No.2020 of 2011 in MACMA No.257 of 2016 & MACMA No.257 of 2016

COMMON ORDER :

Heard the learned counsel for the appellant-insurer and the learned counsel for the claimants/Respondent Nos.1 and 2. Respondent Nos.3 and 4 remained exparte before the Tribunal as well as herein and no way fatal to the maintainability of the appeal vide **Meka Chakra Rao v. Yelubandi Baburao**[1]. At request of both sides, the appeal is taken up for hearing for the reasons supra.

2) The only issue is whether the award of the Tribunal fixing joint liability is unsustainable and the insurer is entitled to be exonerated or the joint liability be converted into pay and recovery. Undisputedly, the Tribunal from the paras 14 to 16 of the award categorically disposed the vehicle involved is a Transport L.M.V and the driver got L.M.V non-transport since date of issue under Ex.X-1 on 29.04.1985 to 10.05.2010 from renewal also on 11.05.2007, whereas the L.M.V Transport was originally having only upto 21.04.2003 and the renewal was only on 11.05.2007. The Tribunal did not further advert to say how joint liability despite this deficiency could be ordered. No doubt, there is nothing to show from evidence of R.W-1 and 2 of the owner consciously and deliberately allowed with knowledge about expiry of the L.M.V transport and

non-renewal apart from by the date of accident. The driver got L.M.V non-transport undisputedly.

3) Having regard to the above and as per the expressions in ***National Insurance Company Limited Vs. Swaran Singh & Others***[2]***,*** **Kusumlatha and others V. Satbir and Others**[3] and **S.Iyyappan Vs. United India Insurance Company**[4] the Tribunal should have ordered to the extent of pay and recovery instead of joint liability though insurer is not liable to be exonerated from the expressions supra.

4) Accordingly and in the result, while allowing the appeal in part and while modifying from joint and several liability of the insurer and insured to pay by the insurer and then to recover. 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 **Lehru** (supra) & **Nanjappan** (supra) 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 Tribunal holds good. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

08.02.2016
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[1] 2001(1)ALT 495 DB

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

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

[4] (2013) 7 SCC 62