

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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M.A.C.M.A.M.P.No.3449 of 2010 IN/AND

M.A.C.M.A.No.289 of 2016

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ORDER:

MACMA MP No.3449 of 2010 is filed to condone the delay of 22 days in filing the appeal against the order and decree dated 09.02.2010 in O.P.No.1075 of 2005 on the file of Motor Accidents Claims Tribunal-cum-IV Additional District Judge (II Fast Track Court), Nalgonda.

2. Heard the learned counsel for the appellant/insurer and also the claimants/respondents 1 to 5, of whom the claim filed by sole claimant, during pendency of the claim petition died and claimants 2 to 5 were brought on record as his legal representatives and they are arrayed as respondents 1 to 5 in the appeal. The 1st respondent/owner remained exparte before the tribunal and even impleaded in the appeal and dismissed for default, no way fatal to the maintainability of appeal vide **Meka Chakra Rao vs Yelubandi Babu Rao @ Reddemma**. Perused the material on record.

3. The delay of 22 days in filing the appeal is condoned as the reasons assigned is due to administrative reasons. At request, the appeal is taken up for hearing.

4. The main contention of the learned counsel for the appellant is that the tribunal gravely erred, having referred the expression of the Apex Court in **Insurance Company Limited v. Swaran Singh** that was followed by another expression in [National Insurance Co. Ltd. v. Geeta Bhat](#) of non renewal of license and by the date of the accident occurred with no valid license insurer cannot be exonerated but for to pay and recovery. However having held in para-12 of the award of

license already expired by the date of accident with no renewal but for six months thereafter it is the say of the tribunal gravely erred not incorporation of pay and recovery direction in the operative portion of the decree and award.

5. Whereas, it is the contention of the learned counsel for the claimants that once license is subsequently renewed trace back date of expiry and as good as deemed license by the date of accident.

6. There is no provision if the license is not renewed within the statutory period after expiry of deemed renewal, in the absence of which such contention cannot be accepted. The tribunal having observed mainly relying upon **Swaran Singh** (supra) of a case of pay and recovery for not having license since expired by the date of accident and the renewal was six months thereafter should have been ordered pay and recovery as the same is supporting by subsequent expressions in **S.Iyyappan v. United India Insurance Company**.

7. Having regard to the above, while confirming the quantum of compensation with rate of interest, the finding of the tribunal 'the joint liability' is set aside and modified as '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. Lehu** and **Oriental Insurance Company Limited Vs. Nanjappan & Others** that the insurer is entitled, while depositing the amounts payable, if not deposited or paid any amounts 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 deposited amount of the

respective claimant (but for to invest in a bank) till such attachment order is made. However, after the same, the tribunal shall not withhold the amounts of the claimant, if there is any necessity to permit for any withdrawals but for to invest the respective balance amounts separately in fixed deposits in a nationalized bank. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

8. Miscellaneous petitions, pending if any, shall stand closed. There is no order as to costs.

Dr. B. SIVA SANKARA RAO, J

Date:29-01-2016

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