

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA MP No.3671 OF 2012

IN/AND

MACMA No.409 OF 2016

JUDGMENT:

____ Heard learned counsel for the appellant – insurer, who is respondent No.2 in MV OP No.1308 of 2009 among the two respondents including owner of motor cycle Chassis No.MD 2 DHDH22 PCM 40107 remained exparte before the Tribunal.

____ 02. The claim maintained by the injured under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act') for Rs.2,00,000/-, the Tribunal by award dt.15.06.2011 granted compensation Rs.82,500/- with interest at 7.5% per annum with joint liability. Impugning the said joint liability, the insurer maintained the appeal with delay of 69 days and the reason assigned is administrative delay in giving legal opinion, granting proceedings and forwarding papers.

____ 03. The delay is condoned.

____ 04. Learned counsel for the appellant-insurer submits that the evidence on record with reference to Ex.A.2 – Charge sheet relied on by the claimant shows that the driver was charged for the offence under Section 181 of the Act for not possessing the driving licence and in the evidence, R.W.1 deposed that from the charge sheet and also from the notice issued to the driver covered by Exs.B.3 to B.6 and not producing licence, thereby there is no sufficient proof and that thereby the Tribunal gravely erred in fixing joint liability instead of exonerating the liability of the insurer.

____ 05. Whereas it is the contention of the counsel for the claimant/ R.1 that the award of the Tribunal holds good, merely because some other view is possible, there is nothing to interfere, hence to dismiss the appeal.

____ 06. R.2 served failed to attend, no way fatal to the appeal vide expression of the Apex Court in **Meka Chakra Rao v. Yelubandi**

Babu Rao @ Reddemma And others^[1] .

07. Perused the material on record.

08. The evidence on record categorically establishes that the driver not having valid driving licence and even notice to prove driving licence issued to the driver-cum-owner covered by

Ex.B.3 to B.6, failed to produce driving licence, apart from it, the evidence of claimants under Ex.A.2 - charge sheet clearly speaks against whom, it was charged for the offence under Section 181 of the Act and the expression of the Apex Court in **National Insurance**

Company Limited v. Rattani and others^[2] clearly speaks when the claimant produces the evidence and even can be relied on by the insurer from the facts therein.

09. Having regard to the above, once the insurer established that the driver is not having valid driving licence, the Tribunal erred in fixing joint liability instead of fixing pay and recovery vide expressions of the Apex Court in **National Insurance Company Limited Vs. Swaran**

Singh & Others^[3] , **Kusumlatha and others V. Satbir and Others^[4]**

and S.Iyyappan Vs. United India Insurance Company^[5] .

10. Accordingly, and in the result, the appeal is partly allowed confirming the quantum, however modified the liability of the insurer to pay and recovery with the following:

“ The respondents shall deposit the compensation 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 Act 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.”

Rest of the award holds good. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.08.02.2016
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MACMA MP No.3671 OF 2012
IN/AND
MACMA (SR) No.1320 OF 2012
08.02.2016

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[\[1\]](#) 2002 ACJ 828
[\[2\]](#) (2009) 2 SCC 75
[\[3\]](#) (2004) 3 SCC 297=2004-ACJ-1
[\[4\]](#) AIR 2011 SC 1234 = 2011 (2) SCJ 639
[\[5\]](#) (2013) 7 SCC 62