HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.Nos.248 OF 2010 & 1615 OF 2016

COMMON JUDGMENT:

The only issue involved for, nothing to interfere with the quantum arrived by the Tribunal concerned, is whether the insurer can be made liable to pay compensation from the joint liability fixed by the Tribunal with the finding of the accident was the result of rash and negligent driving of the driver of the crime vehicle.

2. It is the contention that though it is a package policy, the vehicle insured is for own use and not for hire as public carriage vehicle.

3. A perusal of the policy shows package 'B' policy. If such is the case, it covers the inmate of the passenger carriage, but for to say from the contention of no separate policy taken after conversion of the vehicle from the own use to public use as a plying taxi. It amounts to only violation of permit. It is not even a case of the existing policy cancelled. Once the policy covers the risk otherwise but for there is any violation of permit, it is a fit case for pay and recovery so far as the third party claimants for the deceased and injured claimant concerned, for the insurer cannot avoid. Thereby the joint liability fixed by the Tribunal is liable to be converted into liability of pay and recovery.

4. Accordingly, the present appeals are allowed in part by converting joint liability of insurer into pay and recovery with the following pay and recovery directions:

The insurer shall deposit said amounts within one month from the date of receipt of a copy of this order, failing which the respective claimant/s can execute and recover. It is made clear from the settled expressions of the Apex Court in ***United India Insurance Co. Ltd. V. Lehru***[1] and ***Oriental Insurance Company Limited Vs. Nanjappan***[2] that the insurer is entitled, while depositing the amounts payable, if not deposited or paid any amount 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 claimant/s (but for to invest in a bank) till such attachment order is made, if moved application for execution and attachment within three months from date of receipt of the order. However, after the same, the tribunal shall not withhold the amount of the claimant/s, if there is any necessity to permit for any withdrawals, but for to invest the respective balance amounts separately in fixed

[1] JT-2003(2) SC 595 = 2003 ACJ 611
[2] (2004) 13 SCC 224=2004-SAR(civil)-290

deposit in a nationalized bank. Rest of the terms of the awards of the Tribunal hold good.

5. There is no order as to costs in both the appeals. Miscellaneous petitions pending, if any, in this case shall stand closed.

DR.B.SIVA SANKARA RAO,J

20.03.2017
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