HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.Nos.5006 of 2008 & 3818 of 2011

COMMON JUDGMENT:

Both the appeals are arisen out of the same award of the Tribunal in O.P.No.573 of 2001 dated 21.02.2006. The claim was maintained under Section 166 of Motor Vehicles Act (for short 'the Act') by the injured claimant no other the driver in the course of employment under the respondent No.1-owner of the vehicle bearing No.AP-26-T-5446 insured with the 2nd respondent under Ex.B1-Policy. It is in the course of employment, the accidental injuries were sustained by him on 28.06.2000 at about 01.00 AM on NH-5 in the way from Nellore to Kalahasti. It is immaterial that it is outcome of negligence, if any, as it is in the course of employment. The award of the Tribunal also speaks under the policy there is additional premium paid to cover the risk of the driver in the course of employment that is also not in dispute from Ex.B1.

2. The insurance company is liable as the award of the Tribunal speaks the insurer is liable to pay, that is impugned by the insurer by maintaining the appeal in MACMA.No.3818 of 2011. Whereas the claimant maintained MACMA.No.5006 of 2008 impugning the said quantum is utterly low and unsustainable.

3. Coming to the driving licence of the driver concerned, Ex.B2 is the office copy of notice along with acknowledgment of respondent No.1 and directing to produce the driving licence particulars, R.1 did not respond that is the only contention

placed reliance. However, the material on record, more particularly, from the Ex.A3 driving licence of PW.1 injured produced by him he got transport driving licence only from 17.09.2001 and not before, so he got only as on the date of 28.06.2000 only non-transport driving license for the vehicle in question is a transport light motor vehicle. Thus, he has no valid driving license. From the contention of the insurer in the appeal, there is nothing to show that the owner consciously and deliberately allowed the driver who had no perfect and valid driving licence and in the absence of which, once the policy covered the risk, the insurer has to pay and recover including from the expression of the three Judge Bench of the Apex Court in **National Insurance Co. Ltd Vs. Swaran Singh**[1], which reiterated in **Kusumlatha V. Satbir**[2] and **S.Iyyappan Vs. United India Insurance Company**[3].

4. Having regard to the above, instead of joint liability of owner and insurer is modified to the extent of pay and recovery by partly allowing the appeal of the insurer i.e., MACMA.No.3818 of 2011 only to that extent.

5. Now coming to the quantum impugned by the claimant in the appeal MACMA.No.5006 of 2008, the evidence on record including from the PW.2 Doctor examined on commission for the 4 injuries he sustained as per Ex.A4-case sheet and Ex.A5-X-ray film is he sustained compound fracture and comminuted to the fracture of right leg middle third of both bones of right leg and there was external fixation in the first instance and also ilizarov

[1] 2004 ACJ 1 (SC)
[2] AIR 2011 SC 1234 = 2011 (2) SCJ 639
[3] 2013 (7) SCC 62

fixation by 2nd operation and he was operated thrice on 27.07.2000, 30.08.2000 & 24.10.2000 and the external fixation was terminated on 30.08.2000 and the ilizarov fixation on 08.01.2001 later POP applied and as per PW.2 Dr. Raju there is as if 45% permanent disability to the right leg. In fact he did not certify anywhere and the case sheet-Ex.A4 no way reflects the same much less he was subjected to the examination by Medical Board to give any credence including for the 15% disability fixed by the lower Court that too without any observation by the lower Court, but for PW.2 as the deformity leading to permanent disability effecting avocation. Further more, as held by the Apex Court in **Raj Kumar Vs. Ajay Kumar**[4], the permanent disability percentage to be taken for the whole limbs and functional disability and not for one part of a limb, permanent disability apart from there is no proof regarding permanent disability what is weighing oral evidence in the absence of any proof as discussed above. For the other injuries including for the 6 months period of bed rest as per PW.2 evidence reflects from the case sheet, the Tribunal awarded Rs.12,000/- towards loss of earnings, for the fractures and the injuries of Rs.81,200/- in all including pain and sufferance and Rs.5,000/- towards transport charges, extra nourishment and damage to clothing and for medical expenses Rs.4,000/-. Though medical expenses are utterly low including transport charges and extra nourishment, once it is reasonably granted of Rs.81,200/- for the injuries with no permanent disability, it requires no interference including on rate of interest.

[4] 2011 ACJ 1

6. Accordingly and in the result, the appeal of the claimant i.e., MACMA.No.5006 of 2008 is dismissed and the appeal of the insurer i.e., MACMA.No.3818 of 2011 is allowed in party by modifying the joint liability into pay and recovery with the following conditions:

It is made clear from the settled expressions of the Apex Court in ***United India Insurance Co. Ltd. V. Lehru***[5] & ***Oriental Insurance Company Limited Vs. Nanjappan & Others***[6] 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.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.07.2017
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[5] JT-2003(2) SC 595 = 2003 ACJ 611
[6] (2004) 13 SCC 224=2004-SAR(civil)-290