HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.699 of 2010

JUDGMENT :

The 2nd respondent-insurer among the two respondents including the owner of mini lorry bearing No.KA-14-B-9117, impugning the order of the Additional Motor Accident Claims Tribunal-cum-Family Court, Nellore (for short, 'the Tribunal') dated 08.10.2009 in M.V.O.P.No.181 of 2007 maintained by the sole claimant for a compensation of Rs.1,50,000/- under Section 166 of the Motor Vehicles Act (for short, 'the Act'), preferred the present appeal.

2. The contentions in the grounds of appeal vis-à-vis the oral submissions of the learned counsel for the insurer are that the Tribunal gravely erred in holding compensation of Rs.61,000/- by fixing joint liability instead of total exoneration of the insurer mainly on two grounds of there is no policy coverage even otherwise the driver got only LMV non-transport and as per Ex.B.2 the driver was not having transport license and the injured was travelling by sitting on the loaded boxes and not even sitting in the cabin and thereby fixing joint liability on the insurer is unsustainable and the appeal has to be allowed by exonerating the insurer.

3. Whereas, it is the submission of learned counsel for the claimant that the award of the Tribunal holds good, for this Court while sitting in appeal, there is nothing to interfere, hence to dismiss the appeal.

4. Heard and perused the material on record.

5. Ex.A.1 policy is 'B' package commercial. The vehicle in use is commercial. The policy specifically mentions additional premium of Rs.75/- collected for non-fare paid passenger. If he is a driver, Act policy itself covers from Section 147(1) proviso of the Act, but for the additional premium collected herein to cover the additional risk. The contention that the injured is not a non-fare paid passenger, but for, it extends only to the driver of the vehicle is negated, thereby, as also rightly held by the Tribunal.

6. Now coming to the further contention on the liability of the insurer seeking exoneration is concerned, no doubt, Ex.B.1 clearly speaks the driver has no valid driving license from Column No.17 of got only LMV non-transport. The vehicle in question is a transport vehicle. A LMV non-transport driver with license not entitled automatically to LMV transport, but for after lapse of prescribed time and after undergoing the qualified tests, thereby there is no valid license. Further, the injured was travelling by sitting on the load instead of sitting in the cabin even his risk is covered as non-fare paid passenger, thereby there is violation of permit and policy conditions. However, once policy covered the risk, the insurer cannot be exonerated, but for to pay and recover from the expression placed, that was discussed before the Tribunal of **National Insurance**

Company Limited v. Swaran Singh and others[1]. Having regard to the above, what the Tribunal awarded of joint liability is liable to converted into pay and recover liability against the appellant/2nd respondent.

7. Accordingly and in the result, the appeal is allowed in part by modifying the joint liability against the 2nd respondent-insurer to liability of pay and recover and respondent No.2 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 **United India Insurance Co. Ltd V. Lehru**[2] & **Oriental Insurance Company Limited Vs. Nanjappan & Others**[3] that the insurer is entitled, while depositing the amount payable, if not deposited or paid any amount so far to deposit the balance due and 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

---

[1] (2004) 3 SCC 297
[2] 2003 ACJ 611
[3] (2004) 13 SCC 224

deposit in a nationalized bank. Rest of the terms of the award of the Tribunal holds good.

8. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

3rd January 2016.

mar