HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.Nos.1452,1453 and 1456 OF 2011

COMMON JUDGMENT:

These three appeals viz., MACMA No.1452 of 2011(against O.P.No.645 of 2008, MACMA No.1453 of 2011(against O.P.No.647 of 2008) and MACMA No.1456 of 2011(against O.P.No.644 of 2008) were filed by the 2nd respondent-Insurer among the two respondents including the owner of the Maruthi Car bearing No.AP09 B 8464 in the above said petitions filed under Section 166 of the Motor Vehicle Act,1988 *(for short, 'the Act')*, on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum-Family Court-Cum-Additional District Judge, Khammam, (*for short, 'Tribunal')*, for the claim of

Rs. 3,00,000/- in O.P.No.646 of 2008 filed by the claimant Koduru Ramesh, since granted total claim, Rs.50,000/- in O.P.No.647 of 2008 filed by Koduru Chakravarthy(minor) represented by his father Koduru Ramesh(claimant in O.P.No.646 of 2008), since granted Rs.40,000/- and Rs.50,000/- in O.P.No.644 of 2008 filed by Koduru Nikhil(minor) represented by his father Koduru Ramesh since granted Rs.40,000/- in all together with interest at 7.5% p.a. with joint liability by respective awards dated 24.09.2010.

2. The facts of the lis covered by the common accident are that, said Ramesh while proceeding towards Sattupalli to Khammam with his children named supra as inmates of the car, the accident was occurred on 16.11.2007 near T.T.D. Kalyan Mantapam, Kalluru village, Khammam district from the car driver lost control and dashed against the road side divider and also dashed against one Innova car coming in opposite direction and thus ouotcome of the car driver's negligence.

3. The contentions in the grounds of the appeals impugning the said joint liability of the Insurer by saying that the policy not

covered the risk of the inmates of the car and so the Insurer cannot be made liable and hence to set aside the awards by allowing the appeals. The learned counsel for the Insurer in all the appeals reiterated the said contentions during course of hearing. Seeking to exonerate the Insurer for no liability and also to reduce the compensation particularly in O.P.No.645 of 2008(MACMA No.1452 of 2011).

4. Whereas, it is the contention of the learned counsel for the respective claimants in all the three appeals from the 2nd respondent-owner of the crime vehicle from the postal authorities endorsement as addressee left, deemed as served and taken as heard, that the awards of the tribunal hold good and for this Court while sitting in appeal there is nothing to interfere with the joint liability of the Insurer and hence, to dismiss the appeals.

5. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in both the appeals. As common questions of fact and law involved mainly on the liability of the Insurer, all the appeals taken up together to decide.

6. Now the common points that arise for consideration in both the appeal are:

> 1. Whether the quantum of compensation awarded by the tribunal in the awards is excessive and the tribunal went wrong in fixing joint liability of Insurer and the policy not covered the risk to indemnify the owner by the Insurer for the inmates of the car, if so, the award of the tribunal are unsustainable and require interference by this Court while sitting in appeal and with what observations?
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> 2. To what result?

Point No.1:

7. There is no dispute on the manner of the accident in all the

three appeals but for on the quantum and on the liability of the Insurer. Even coming to the respective quantums, there is no dispute from the nature of injuries sustained and treatment taken, loss of earnings, attendant and transport charges, medical expenses, pain and sufferance and disability particularly in O.P.No.645 of 2008 and as such the quantum also no way requires interference. Thus, the main contention of the Insurer that the Insurer made liable though the policy not covered the risk. In fact, as per the IRDA Regulations dated 16.11.2009, once the policy is a package policy and not mere Act policy, for the inmates, the policy covers. The Apex Court in **National Insurance Company Limited Vs.Balakrishna**[1] categorically held in this regard that once the policy is not an Act policy and package policy from the additional premium paid for the inmates, the insurer is bound to indemnify the owner for the claims made. Here, from the above proposition with reference to the IRDA Circular, dated 16.11.2009 coming to the facts, on perusal of Ex.B.1 policy, it shows the total amount paid is of Rs.801/- which includes basic premium of Rs.670/-+P.A., the owner and driver + one employee + third party risk/basic of Rs.67/- + loading charges on the policy. Thus, there is Rs.67/- as additional premium paid for the inmates of the car. Hence, it cannot be called as mere Act policy but for package policy from the policy covered additionally besides Act policy, risk of driver–cum-owner, P.A. coverage for one employee and coverage for the inmates. It is not the case of the Insurer that there are more than five claims to apply the expression in **National Insurance Company Limited Vs. Anjana Shyam**[2] to restrict the Insurer's liability to the maximum of five persons of the vehicle capacity 5+1. Hence, the tribunal thereby rightly held in fixing joint liability on the Insurer along with the owner of the crime vehicle in all the three appeals and as such but for this Court while sitting in appeals there is nothing to interfere. Accordingly, Point No.1 is answered.

Point No.2:

8. In the result, all the three appeals are dismissed. There is no order as to costs. Consequently, miscellaneous petitions, if any, pending in these appeals shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 24-04-2015
B/o
vvr

[1] 2013 ACJ 199
[2] (2007)7 SCC 445