**HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

**M.A.C.M.A. No.839 of 2009**

**JUDGMENT:**

Aggrieved by the Award dt: 21.11.2008 in M.V.O.P No.717 of 2007 passed by Chairman, M.A.C.T-cum-Principal District Judge, Kurnool (for short 'the Tribunal'), the instant appeal is preferred by 2nd respondent/ Insurance Company.

2 a) On factual side, on 25.02.2007 when the deceased—Yellappa along with his wife, children and some others was proceeding in an auto bearing No.AP 02 U 3756 and when it reached Vengalampalli village at about 9:00pm, another auto bearing No.AP 21 X 4553 came in the opposite direction being driven by its driver in a rash and negligent manner and dashed the auto of the deceased. Thereby, the deceased and others sustained injuries and the deceased succumbed to injuries on the way to Government Hospital, Peapully. A claim petition was filed by the LRs of the deceased in MVOP No.717 of 2007 against the owner and insurer of the auto bearing No.AP 21 X 4553.

b) The respondent No.2/ Insurance Company opposed the claim mainly on the contention that the auto bearing No.AP 21 X 4553 was not at all involved in the accident and the auto of the deceased fell in a ditch but the claimants with the aid of the police concocted a false story as if the crime auto went and dashed against their auto. It is further contended that the driver of the crime auto had no valid and effective driving licence.

c) However, the Lower Tribunal did not approve the contention that the crime auto was not involved in the accident. Sofaras the contention that the driver of the crime auto had no valid and effective driving licence is concerned, the Tribunal basing on Ex.B.2—driving licence extract of the driver observed that he was possessing driving licence to drive non-transport vehicle. It further observed that mere driving a transport vehicle by a person who was authorized to drive non-transport vehicle would not amount to fundamental breach of the terms and conditions of the policy so as to absolve the liability of Insurance Company. In this regard, the Tribunal relied upon the decision reported in ***New India Assurance Company Limited vs. Roshanben Rahemansha Fakir and another.*** Accordingly the Tribunal fixed joint and several liability on the insured and insurer and awarded Rs.2,50,400/- as compensation with proportionate costs and interest @ 9% p.a.

Hence, the appeal by Insurance Company challenging its liability.

3) The parties in the appeal are referred as they are arrayed before the lower Tribunal.

4 ) Heard arguments of Sri T. Mahender Rao, learned counsel for appellant/ Insurance Company and Sri G.Sravan Kumar, learned counsel for respondent No.2/claimant. R.3 being minor is represented by her mother R.2. Though notice to R.1 was served but there is no representation on her behalf. Notice sent to R.4 was refused vide postal endorsement.

5) Learned counsel for appellant/Insurance Company vehemently argued that the Tribunal having found that the driver had only non-transport driving licence and drove a transport vehicle i.e, auto, ought to have held that the breach of the terms of the policy was committed by the insured/owner and ought to have exonerated the Insurance Company from its liability. He thus prayed to allow the appeal and exempt the Insurance Company from its liability.

6) Per contra, learned counsel for respondent/claimant while opposing the appeal submitted that in the resultant accident, the wife of deceased namely C.Maheshwaramma, who is the 2$^{nd}$ claimant in MVOP No.717 of 2007 was also injured and she filed MVOP No.718 of 2007 on the file of MACT-cum-Principal District Court, Kurnool claiming compensation and in the said claim also the Insurance Company took a similar objection that the driver had no valid driving licence but the said contention was negatived by the lower Tribunal

and awarded compensation against which the Insurance Company preferred MACMA No.808 of 2009, wherein this Court in its judgment dated 01.05.2015 modified the judgment of the Tribunal and directed the Insurance Company to pay compensation and recover the same from the insured. Learned counsel thus submitted that the matter is covered by the judgment of this High Court and therefore, this appeal may also be disposed of accordingly.

7) A perusal of the copy of judgment in MACMA No.808 of 2009 furnished by learned counsel for respondent shows that learned Single Judge of this Court modified the judgment of the lower Tribunal and directed the Insurance Company to pay compensation and recover the same from the insured/owner. In view of the covered judgment arising out of the same facts, following the same, this MACMA is ordered as follows:

8) In the result, this MACMA is partly allowed modifying the award of the Tribunal to the effect that instead of joint and several liability of owner and insurer, the liability of owner is confirmed and the appellant/Insurance Company is directed to indemnify the liability of owner by paying compensation and recover the same from the owner/insured without necessity of instituting any separate suit. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

**U. DURGA PRASAD RAO, J**

Date: 26.10.2015

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