**HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

**MACMA Nos. 458 and 459 of 2009**

**Common Judgment**:

Since both the appeals arise out of the same accident, they are being disposed of by this common judgment.

2. MACMA No.458 of 2009 is filed challenging the judgment and award dated 03.02.2003 passed in OP No. 108 of 1988 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Warangal.

3. MACMA No.459 of 2009 is filed challenging the judgment and award dated 03.02.2003 passed in OP No. 86 of 1988 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Warangal.

4. The parties will be referred to as they are arrayed before the Tribunal to avoid confusion.

5. The claimants filed OP Nos.86 of 1988 and 108 of 1988 claiming compensation for the death of the deceased respectively. The accident occurred due to rash and negligent driving of the driver of the lorry bearing No.ATT 293 which belonged to the respondents 1 and 2 was insured with the third respondent – Insurance Company as on the date of accident, therefore respondents 1 to 3 are jointly and severally liable to pay compensation to the petitioners.

6. The first respondent remained *ex parte*. The second respondent filed counter admitting that he is the owner of the lorry in question which was insured with the third respondent – Insurance Company. It is further contended that the accident occurred due to rash and negligent act of the deceased and there was no negligence on the part of the driver of the lorry and that the amount of compensation claimed by the petitioners under various heads is highly excessive and

exorbitant.

7. The third respondent – Insurance Company filed counter denying all the material averments made in the petition, *inter alia*, contending that there was no rashness or negligence on the part of the driver of the lorry to cause the accident. The lorry was not insured with the third respondent – Insurance Company as on the date of accident and that the amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant, hence petition may be dismissed.

8. During the course of trial, on behalf of the petitioners PWs.1 to 7 were examined and Exs.A1 to A14 were marked. On behalf of the respondents RWs.1 and 2 were examined and Exs.B1 to B3 were marked.

9. A perusal of the record reveals that the Tribunal granted compensation payable by the respondents 1 and 2 and dismissed the claim against the 3rd respondent – Insurance Company. Aggrieved by the same, the second respondent carried the matter in appeal and that this Court remanded the matter to the Tribunal to consider along with another batch of Ops whether the vehicle in question was validly insured with the third respondent –Insurance Company or not?

10. Basing on the oral and documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the lorry in question was validly insured with the third respondent – Insurance Company, therefore respondents 1 to 3 are jointly and severally liable to pay compensation to the petitioners. Feeling aggrieved by the judgment and award of the Tribunal, the third respondent – Insurance Company preferred the present appeals.

11. Sri Kota Subba Rao, learned counsel for the appellants, submitted that the Tribunal failed to consider that the vehicle in

question was not validly insured with the third respondent – Insurance Company. He further submitted that the Tribunal failed to appreciate the discrepancy as to the registration number of the lorry in question and allowed the petitions on assumptions and presumptions.

12. *Per contra*, learned counsel for the claimants submitted that the Tribunal has rightly considered the oral and documentary evidence and allowed the petitions. He further submitted that there are no grounds much less valid grounds to interfere with the judgments and awards of the Tribunal.

13. The only point that arises for consideration in these appeals is whether the lorry in question (crime vehicle) was insured with the third respondent – Insurance Company as on the date of accident or not?

14. As per the testimony of RW.1, the lorry in question was not insured with the third respondent – Insurance Company. A perusal of Ex.B1 – copy of insurance policy reveals that the registration number of the lorry in question is mentioned as AAT 293. It further reveals that the lorry bearing registration No.AAT 293, which belonged to T.Subba Rao–second respondent, was insured with the third respondent – Insurance Company with effect from 20.02.1988 to 19.02.1989. As seen from the testimony of RW.2, he is the owner of the lorry bearing No.ATT 293. In the proposal form he mentioned the lorry number as ATT 293, but the third respondent - Insurance Company, by mistake mentioned the lorry number as AAT 293 in the insurance policy Ex.B1. A perusal of the record clearly reveals that immediately after the accident the lorry was seized by the police and that the second respondent filed a petition before the I Additional Munsif Magistrate, Warangal for release of the vehicle bearing No.ATT 293 and the concerned Court handed over the lorry to the second respondent. If really, the lorry number is AAT 293 the Court may not have released the vehicle basing on the petition filed by the second respondent. In

Ex.A2 - Motor Vehicle Inspector report also the lorry number is mentioned as ATT 293. The oral and documentary evidence placed before the Tribunal clinchingly establishes that the lorry bearing No.ATT 293 belongs to the second respondent. A perusal of the record also clinchingly establishes that the lorry of the second respondent was insured with the third respondent – Insurance Company as on the date of accident. In the charge sheet also this aspect was clarified. Simply because there is a mistake in mentioning the registration number of the lorry in the insurance policy that itself would not absorb the liability of the insurance company. The Tribunal has considered the entire oral and documentary evidence available on record in proper perspective and arrived at a conclusion that the crime vehicle was validly insured with the third respondent – Insurance Company as on the date of accident. Therefore, the third respondent – Insurance Company has to indemnify the liability of the respondents 1 and 2. The respondents 1 to 3 are jointly and severally liable to pay compensation to the petitioners. There are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal. The appeals are devoid of merit and the same are liable to be dismissed.

15. Accordingly, both the MACMAs are dismissed. However, in the circumstances, no costs.

16. As a sequel, the miscellaneous petitions, if any, pending in these MACMAs shall stand closed.

**T. SUNIL CHOWDARY, J.**

Date: 25.02.2015
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