THE HON'BLE SRI JUSTICE S. RAVI KUMAR

<u>MACMA No.2813 of 2007</u>
<u>MACMA No.3092 of 2007</u>
<u>MACMA No.4237 of 2008</u>
<u>&</u>
<u>MACMA No.1486 of 2014</u>

<u>Date:03.07.2015</u>

<u>MACMA No.2813 of 2007</u>

Between:

United India Insurance Co.,Ltd.,
Branch Office at 2/12, First Floor, M.S.Buildings,
R.S.Road, Dharmavaram,
Ananthapur District.

..... Appellant/Respondent No.3.

AND

Smt. Shamash Panjwani,
Widow of Late Sri.Arif Panjwani
And others.

.....Respondents.

<u>MACMA No.3092 of 2007</u>

Between:

United India Insurance Co.,Ltd.,
Branch Office at 2/12, First Floor, M.S.Buildings,
R.S.Road, Dharmavaram,

Ananthapur District.

..... Appellant/Respondent No.3.

AND

Smt. Shamash Panjwani,
Widow of Late Sri.Arif Panjwani
And others.

.....Respondents.

MACMA No.4237 of 2008

Between:

United India Insurance Co.,Ltd.,
Branch Office at 2/12, First Floor, M.S.Buildings,
R.S.Road, Dharmavaram,
Ananthapur District.

..... Appellant/Respondent No.3.

AND

Ismail Dhamani and others.

.....Respondents.

MACMA No.1486 of 2014

Between:

United India Insurance Co.,Ltd.,
Branch Office at 2/12, First Floor, M.S.Buildings,

R.S.Road, Dharmavaram,
Ananthapur District.

..... Appellant/Respondent No.3.

AND

Ismail Dhamani and others.

.....Respondents.

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

MACMA No.2813 of 2007
MACMA No.3092 of 2007
MACMA No.4237 of 2008
&
MACMA No.1486 of 2014

COMMON JUDGMENT:

MACMA No.2813/2007 is preferred against orders dated 19-02-2007 in MVOP No.62/2003 on the file of VI Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Secunderabad.

2. MACMA No.3092/2007 is preferred against orders dated 19-02-2007 in MVOP No.44/2003 on the file of VI Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Secunderabad.

3. MACMA No.4237/2008 is preferred against orders dated 31-08-2006 in O.P No.2783/2003 on the file of V Additional Metropolitan Sessions Judge (Mahila Court)-cum-XX Additional Chief Judge, City Criminal Courts, Hyderabad.

4. MACMA No.1486/2014 is preferred against orders dated 31-08-2006 in O.P No.2738/2003 on the file of V Additional Metropolitan Sessions Judge (Mahila Court)-cum-XX Additional Chief Judge, City Criminal Courts, Hyderabad.

5. These four appeals are preferred against orders of the Chairman, Motor Accidents Claims Tribunal in four separate claim petitions, but they arise out of same accident and therefore, they are dealt together though the orders in the claim petitions are separate.

6. Brief facts leading to these appeals are as follows:-

On 06-01-2002, deceased-Arif Panjwani along with his wife and others left Hyderabad to Nizambad in a Maruthi Car bearing No.AP-10-J-3644 to attend a meeting there, while he was returning, when the car reached near Ayyappa Oil Mill on N.H.No.7 at Wadiaram Village, a lorry bearing No.AP-02-V-2688 came in opposite direction in a rash and negligent manner at a high speed, while overtaking another vehicle proceeding in the same direction went to wrong side and hit the Maruthi Car, as a result, driver of Maruthi Car Arif Panjwani and Nadia Dhamani died on the spot, whereas

Shamash Panjwani and Ismail Dhamani sustained injuries in the said accident. For the death of Nadia Dhamani, his wife and daughter filed O.P.No.2783/2003 claiming a sum of Rs.10,00,000/- as compensation and the Tribunal awarded Rs.5,37,000/-. Ismail Dhamani one of the injured in the said accident filed O.P.No.2738/2003 claiming Rs.6,00,000/- and the Tribunal awarded Rs.1,52,500/-. Wife and two daughters of deceased-Arif Panjwani filed O.P.No.62/2003 claiming Rs.35,00,000/- and the Tribunal awarded Rs.16,16,000/-. Smt. Shamsah Panjwani as injured filed M.V.O.P.No.44/2003 claiming Rs.15,00,000/- and the Tribunal awarded Rs.4,77,964/-. Aggrieved by the compensation granted in favour of respective claimants, Insurance Company filed all these four appeals.

7. On these contentions, in O.P.No.62/2003, trial Court examined one witness and marked 22 documents on behalf of claimants. No witness was examined but four documents were marked on behalf of respondent-Insurance Company.

8. In MVOP No.44/2003, trial Court examined two witnesses and marked 68 documents on behalf of claimant and examined one witness and marked four documents on behalf of respondent-Insurance Company.

9. In O.P.No.2783/2003, trial Court examined one witness and marked eight documents on behalf of claimants and examined two witnesses and marked six documents on behalf of respondent-Insurance Company. Trial Court also

marked three documents under Exs.B1 to B3 as attested copy of insurance policies, certified copy of driving licence and certified copy of report of surveyor.

10. In O.P.No.2738/2003, trial Court examined two witnesses and marked 15 documents on behalf of claimant and examined two witnesses and marked six documents on behalf of respondent-Insurance Company.

11. Heard arguments.

12. Advocate for appellant submitted that the Tribunal failed to consider that the driver of the crime vehicle i.e., lorry had no valid driving licence and the Insurance Company proved through the evidence of R.T.A authorities that the licence possessed by driver of the crime vehicle was fake. He submitted that the Tribunal erred in fixing liability on Insurance Company also though it proved that the driver had no valid driving licence and driving licence possessed was a fake one. He submitted that in two claim petitions, the appellant-Insurance Company took steps to summon the RTA authorities to produce driving licence of the driver of the crime vehicle, but that witness could not be examined in other two claim petitions due to the circumstances beyond the control of Insurance Company. He submitted that when the very same Insurance Company could produce evidence in the other two claim petitions arising out of the same accident and proved that the driving licence of the driver of

the lorry was fake, the Tribunal failed to consider that aspect in the other two claim petitions. He submitted that as per the terms and conditions of the policy, the driver must possess valid driving licence and if the conditions are violated, the Insurance Company is not liable to pay any compensation and only owner is liable, but the Tribunal, without considering this aspect, fixed liability on Insurance Company jointly and severally. He submitted that the awards of the Tribunal have to be set aside against the appellant herein and that the appeals are to be allowed.

13. Advocates for claimants submitted that as the Insurance Company failed to discharge their burden to absorb their liability, the Tribunal passed award against the Insurance Company and the Tribunal has not committed any error in fixing the liability on the Insurance Company. It is further submitted that when the claim petitions are tried separately, evidence recorded in one claim petition cannot be read as evidence in the other claim petitions and the Insurance Company has to produce evidence independently. It is submitted that there are no grounds to interfere with the findings of the Tribunal and all the appeals are devoid of merits.

14. Now the point that would arise for my consideration in these appeals is whether the Insurance Company is also liable along with the other respondents in the claim petitions.

15. **<u>Point</u>**:-There is no dispute with regard to accident that

took place on 06-01-2002. It is also not in dispute that in the said accident, two persons died and two persons sustained injuries. The main contention of the Insurance Company is that driver of lorry, who was held responsible for the accident i.e., S. Amanullah had no valid driving licence and the licence possessed by him was a fake one.

In M.V.O.P.Nos.62 & 44/2003 except examining the officials of the Insurance Company, no other witness is examined, but in the other two O.Ps., Senior Assistant in Deputy Transport Commissioner's Office, Vijayawada was examined to support the plea of the Insurance Company, the driving licence of Amanulla was fake. In a claim petition under the Motor Vehicles Act, Insurance Company has a right to take a defence that the driver of the vehicle, which involved in the accident, was not possessing valid licence. Onus of proving such defence is on the Insurance Company, unless it is shown that the owner despite the information that the licence possessed by his driver is fake entrusts the vehicle to the driver, the Insurance Company cannot be absorbed of its liability under the policy. As seen from the material, there is absolutely no evidence on record to show that the owner had information about the genuineness of the driving licence of Amanulla either at the time of employing him or any time subsequent thereto. As seen from the material, the Insurance Company appointed an Investigator to verify the genuineness of the driving licence of Amanulla and according to that report, the driver of crime lorry was possessing expired driving licence and that report nowhere indicated that the licence was a fake licence. When the own material of the Insurance Company project two aspects, which are contradictory namely; one version is that the licence of the driver of the crime lorry was expired as on the date of the accident and thereby, there was no valid driving licence and the other version is that the licence of the driver of crime lorry was fake. This aspect was considered by the Tribunal with reference to the decisions cited before it and held that the Insurance Company failed in discharging its burden. On a scrutiny of the entire evidence on record, I do not find any wrong in the findings of the Tribunal in fixing liability on the Insurance Company.

16. In **Pepsu Road Transport Corporation v. National Insurance Company**[1]**,** Hon'ble Supreme Court in a case where appellant therein had employed a person whose licence was proved to be fake by the Insurance Company before Tribunal fixed responsibility on Insurance Company to indemnify the liability of owner on the ground that there was no evidence to show that owner had information that the licence possessed by his driver was fake at the time of employing the driver. Here in our case also, there is absolutely no evidence on record to show that owner of the lorry had any information about the genuineness or validity of the driving licence of driver Amanulla either at the time of employing him or at the time of entrusting the vehicle to him,

therefore, following the principle enumerated in the above referred decision, I am of the view that the Tribunal has not committed any error in fastening liability on the Insurance Company also.

17. As rightly pointed out by Advocates for claimants evidence recorded in MVOP Nos.44 & 62/2003 cannot be treated as evidence in O.P.Nos.2738 & 2783/2003, unless such evidence is brought on record in the subsequent claim petitions. So viewed in any angle, the Tribunal has not committed any error in fastening liability on the Insurance Company and I do not find any grounds to interfere with the findings of the Tribunal. Therefore, the point is held against the appellant.

18. For these reasons, all the appeals are dismissed without costs.

19. As a sequel, miscellaneous petitions, if any, pending in these appeals, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:03.07.2015
mrb

[1] **2014 (1) ALD 78 (SC)**