HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.Nos.304 of 2010 & 549, 606 & 607 of 2011

COMMON JUDGMENT:

The 4 appeals are maintained by the 2nd respondent insurer National Insurance Company Limited, Guntur Branch, among the 2 respondents including the owner of the Ambulance bearing No.AP-07-TR-N-716. The claimants in the 4 claims are one injured and 3 deceased respective dependent legal representatives.

2. So far as MACMA.No.304 of 2010 concerned, the 4 claimants no other than husband, 2 major daughters and major son of the deceased V. Lakshmi Kanthamma, aged about 40 years as per Ex.A4-PM report and the claim maintained under Section 166 of Motor Vehicles Act (for short 'the Act') for a sum of Rs.2,50,000/- and the Tribunal awarded compensation of Rs.1,69,500/- with interest @ 7.5% per annum fixing joint liability against the owner and insurer of the Ambulance in O.P.No.806 of 2007 dated 12.01.2009.

3. Similarly so far as MACMA.No.549 of 2011 concerned, the insurer maintained the appeal impugning the award of the Tribunal dated 12.01.2009 in O.P.No.827 of 2007 maintained by the 3 claimants no other than wife and 2 major sons of the deceased M. Sita Ramaiah, aged about 50 years as per Ex.A4-PM report and the claim maintained under Section 166 of the Act for a sum of Rs.2,00,000/- and the Tribunal awarded compensation of Rs.1,39,500/- with interest @ 7.5% per annum by fixing joint liability.

4. So far as MACMA.No.606 of 2011 concerned, the insurer maintained the appeal impugning the award of the Tribunal dated 12.01.2009 in O.P.No.807 of 2007 maintained by the 2 claimants no other than parents of the deceased Yeswanth, aged about one month (just 40 days) as per Ex.A4-PM report and the claim maintained under Section 166 of the Act for a sum of Rs.1,50,000/- and the Tribunal awarded compensation of Rs.51,500/- with interest @ 7.5% per annum by fixing joint liability.

5. So far as MACMA.No.607 of 2011 concerned, the insurer maintained the appeal impugning the award of the Tribunal dated 12.01.2009 in O.P.No.805 of 2007 maintained by the injured claimant aged about 30 years and the claim maintained under Section 166 of the Act for a sum of Rs.2,00,000/- and the Tribunal awarded compensation of Rs.59,000/- with interest @ 7.5% per annum by fixing joint liability.

6. The contentions in the grounds of appeal of the 4 appeals maintained by the insurer vis-à-vis oral submissions impugning the said awards fixing joint liability are that the respective awards of the Tribunal are contrary to law. The Tribunal gravely erred in fixing joint liability in all the claims against the insurer, the Tribunal should have seen that the Ambulance is only to permit 2 persons and allowing 5 persons by overloading is contrary to the very permit and even policy not covers the risk and thereby, the insurer is to be exonerated and also the contention that when the accident occurred from the ambulance hit a stationed lorry and Tribunal ought to have fixed contribution of the stationed lorry

bearing No.AP-07-U-1526 parked negligently on the road for the accident occurred on 08.11.2004 at about 03.00 AM at Phirangipuram road at Sattenapalli bus stand and non impleadment of the owner and insurer of the stationed lorry is fatal to the maintainability of the appeal and thereby, sought for allow the appeals by exonerating the insurer from liability.

7. Whereas it is the submission of the learned counsel for the claimants in MACMA.No.304 of 2010 that the award of the Tribunal holds good but for no cross objections to enhance, hence to dismiss the appeal. But in another respective appeals though notice served to the claimants failed to attend and MACMA.No.606 of 2011, the owner of the ambulance Dr. K.Nageswara Rao remained exparte before the Tribunal in all claims, even not served no way fatal to the appeal as the submission and same is recorded vide decision **Meka Chakara Rao Vs. Y. Babu Rao**[1].

8. Heard as referred supra and perused the material on record for common disposal all the 4 claims arisen out of the same accident.

9. The evidence on record of RWs.1 and 2 in all the 4 claims by name M.V. Chelapathi Rao and J. Vijaya Durga and Exs.B1 and B2 policy copy and Xerox copy of R.C. and Exs.X1 to X3, registration extract of the ambulance, permit and driving license of the driver Mastan Vali as discussed by the Tribunal in respective awards of the issue No.2 clearly reveal the seating capacity as per the permit for the ambulance is only 2 persons reflected from Ex.B2 with reference to Exs.X1 and X2 R.C. and permit. Ex.B1

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[1] 2001 (1) ALT 495 (DB)

policy is in subsistence undisputedly as on the date of accident shows legal liability to driver under WC Act (IMT 28) Rs.25,000/-, no P.A. cover premium, no additional P.A. cover premium under IMT 16, compulsory P.A. cover premium is Rs.100/-. Here as per the Ex.A2 charge sheet and Ex.A1-FIR there are more than 5 persons occupied the ambulance at the time of accident out of which 3 persons died and one person injured which are the 4 claims supra. In the ambulance there is driver and compounder of the hospital that were traveling besides 4 victims and that was also the observation of the Tribunal in dealing with issue No.2 of the ambulance is overloaded. In fact a perusal of the policy shows it is a package policy, the IRDA regulations of 16.11.2009 speaks once it is a standard package policy the insurer is liable to indemnify in the public carriage vehicle the risk of the inmates. No doubt the permit speaks to cover only 2 persons as referred supra. There are 5 persons, the standard package policy can cover therefrom besides driver and compounder risk of 2 persons from the permit and there is no additional P.A. cover premium collected under IMT 16 from the very policy. Once such is the case as laid down by the Apex Court in **National Insurance Company Limited Vs. Anjana Shyam**[2] where the claims are more than coverage of risk the insurer is liable to highest claims and for the rest the owner of the vehicle that apportioned among the claimants respectively to the extent the claimants were allowed. Once such is the principle that applicable in the case on hand and for no cross appeals maintained by the claimants or by the owner, the highest claims awarded out of 4 claims is in O.P.No.806 of 2007 (MACMA.No.304

[2] (2007) 7 SCC 445

of 2010) is Rs.1,69,500/- and in O.P.No.827 of 2007 (MACMA.No.549 of 2011) is Rs.1,39,500/- and the other 2 claims are for smaller amounts of Rs.51,500/- and Rs.59,000/-. Once the highest claims to be satisfied out of the 4 claims is for Rs.1,69,500/-+Rs.1,39,500/-=Rs.3,09,000/-, the insurer is liable only to that extent to recover from the insurer among the 4 claims in proportion to the compensation awarded for the remaining, the owner of the ambulance to be made liable. Here no doubt the accident was at about 03.00 AM the ambulance dashed against stationed lorry parked on the road. The evidence on record establishes the same though it is the observation of the Tribunal had the driver taken precaution he could averred that driver by parking the lorry without blinking lights in the night hours no way cannot absolve owner and insurer of the lorry to indemnify, however non impleadment of them is no way fatal but for the insurer and owner to pay compensation and recover by filing execution petition against the owner and insurer of the said lorry as laid down by the 3 Judge Bench of the Apex Court in **Khenyei Vs. New India Assurance Co. Ltd. & Others**[3].

10. Thus among the four, highest claim is Rs.1,69,500/-+Rs.1,39,500/-=Rs.3,09,000/- in M.A.C.M.A.Nos.304 of 2010 & 549 of 2011 for which the insurer can be made liable with owner of the vehicle and for the remaining two, the insurer cannot be made liable but for owner is liable as per **Anjana Shyam supra**.

11. Rs.3,09,000/- has to be apportioned among the four respective claims in respect of their compensation that comes to

[3] 2015 (6) SCC 273

Rs.1,29,500/- to the claimants in M.A.C.M.A No.340 of 2010 in O.P.No.806 of 2007 is entitled to recover from the insurer but for the remaining amount of Rs.40,000/- to recover from the owner. Similarly, the claimants in O.P.No.827 of 2007 in M.A.C.M.A.No.549 of 2011 is entitled to recover an amount of Rs.1,09,000/- from the insurer but for the remaining amount of Rs.30,500/- to recover from the owner of the vehicle. Similarly, the claimants in M.A.C.M.A.No.606 of 2011 in O.P No.807 of 2007, is entitled to Rs.31,500/- recover from the Insurer but for the remaining amount of Rs.20,000/- to recover from the owner. Similarly, the claimant in M.A.C.M.A.No.607 of 2011 in O.P No.805 of 2007, is entitled to Rs.39,000/- recover from the Insurer but for the remaining amount of Rs.20,000/- to recover from the owner.

12. With the above observations, the four appeals are partly allowed. No costs.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.11.2016
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