**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

**Rev.CMAMP.No.3891 of 2007 in CMA.No.782 of 2003**
**AND**
**M.A.C.M.A.No.845 of 2005**

**COMMON JUDGMENT:**

Rev.CMAMP.No.3891 of 2007 in CMA.No.782 of 2003 and MACMA.No.845 of 2005 arise out of order in O.P.No.758 of 1998 dated 22.01.2002 on the file of the Court of Motor Accidents Claims Tribunal (I Additional District Judge) at Nalgonda (for short, Tribunal) and therefore they are being disposed of by this common judgment.

2. CMA.No.845 of 2003 was filed by the insurance company challenging its liability, whereas CMA.No.782 of 2003 was filed by the claimant seeking enhancement of compensation. However, when CMA.No.845 of 2005 was pending, CMA.No.782 of 2003 was disposed of by this Court enhancing the compensation from Rs.89,000/- to Rs.1,70,000/-, by order dated 10.04.2007. Since the appeal preferred by the insurance company is pending, it filed Rev.CMAMP.No.3891 of 2007.

3. In the appeal preferred by the insurance company, the sole ground that was raised is that the driver of the vehicle was having a license to drive two wheeler vehicles and he is not entitled to driver three wheeler vehicles. It is stated in the grounds of the appeal that the same is evident from Exs.B.1 and B.2. Ex.B.1 is the investigation report, whereas Ex.B.2 is the copy of driving license issued by the RTO, Ranga Reddy District. But, no such plea was taken before the Tribunal by the insurance company and no issue was also framed. However, an argument was advanced before the Tribunal raising the same point and the same negatived in para 14 of the award by holding as follows:

> "14. To substantiate his contention, the petitioner relied on a decision in a case of United India Insurance Company Kurnool Vs. Laxmaiah and others reported in 2000 (3) A.L.D. 491, Section 147 of M.V. At – The Appeal filed by the Insurance Company against the award of compensation – Plea of the Insurance Company that the driver of vehicle has no valid licence – In the absence of evidence

adduced by the Insurance Company that the owner of the vehicle who has entrusted it – the driver is aware of the fact that he had no licence – Insurance company cannot be escaped its liability. In the instant case the driver of Auto having two wheeler licence, is admitted by the respondents. The allegations of R-2 is that the two wheeler licence holder shall not driver three wheeler motor vehicle i.e., the Auto. It is for the second respondent to establish that two wheeler licence holder is barred to driver the three wheeler vehicle. In the absence of any material adduced in this aspect by R-2 it cannot be said that the two wheeler driver who drove the auto in the instant case shall not drive three wheeler motor vehicle i.e. Auto. In view of the above discussion and conclusion, the above said citation is quite applicable to the facts and circumstances of the case on hand."

4. When a further argument was advanced on behalf of the insurance company denying its liability, the Tribunal, by relying on a judgment in United India Insurance Company Kurnool Vs. Laxmaiah[1], held that insurance company cannot be exonerated from liability.

5. In the absence of any evidence adduced before the Tribunal with regard to disability of the driver of the vehicle, who is having license to drive two wheeler vehicles, from driving three wheeler vehicles, this Court is not inclined to differ with the finding of fact recorded by the Tribunal and accordingly CMA.No.845 of 2005 is dismissed. However, in view of disposal of CMA.No.782 of 2003 by this Court on 10.04.2007 on the basis of the facts available on record, Rev.CMAMP.No.3891 of 2007 also does not survive for consideration and it is accordingly dismissed.

6. In the result, Rev.CMAMP.No.3891 of 2007 in CMA.No.782 of 2003 and MACMA.No.845 of 2005 are dismissed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

**A.RAMALINGESWARA RAO, J**

Date: 08.02.2016
TJMR

[1] 2000 (3) ALD 491