HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA Nos.2931 and 2942 OF 2009

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COMMON JUDGMENT:

The 3rd respondent-Insurance Company among the 6 respondents viz; driver, owner and Insurer of tanker bearing AP22 U 369, leave about the driver, owner and Insurer of lorry bearing No.AP31U1988(R.4 to R.6) of the claim petition maintained (both the petitions) under Section 166 of the Motor Vehicle Act,1988 *(for short, 'the Act')* by respective injured/claimants of O.P.No.92 of 2006 (covered by MACMA No.2942 of 2009) for a claim of Rs.2,50,000/- but granted Rs.80,500/- with interest at 12% p.a. and the injured/claimant in O.P.No.165 of 1996 (covered by MACMA No.2931 of 2009) for a claim of Rs.1,00,000/- but granted Rs. 55,000/- with interest at 12% p.a., by the learned Chairman, Motor Accidents Claims Tribunal–cum-District Judge, Visakhapatnam along with some other petitions(for short, 'the Tribunal') preferred these appeals against the common award dated 15.02.2001 impugning the said award with the common contentions in the ground of appeal that the tribunal erred in fixing joint liability though the claimants in both the petitions vis-à-vis the other claimants traveled as if authorized to travel ignoring the factum of they are unauthorized passengers and policy no way covers the risk.

2. Whereas, the contention of the learned counsel for the respective claimants is that the award of the tribunal holds good and there is nothing to interfere with the award of the tribunal.

3. Heard and perused the material on record.

4. In fact, this Court in CMA No.1735 of 2011 and CMAMP No.1283 of 2002 vide order dated 28.06.2011 referred the expression of the Apex Court in **Asha Rani Vs. New India Insurance Company**[1]**.** In fact, the Apex Court in **National Insurance Co. Ltd. v. Saju P. Paul**[2], **National Insurance Company Limited Vs.**

Savitridevi[3] and **National Insurance Company Vs. Sanjeev Kumar Samrat**[4] etc., categorically held once there is no contractual liability covering the risk and the risk is not covered by Act policy, the liability of Insurance company to indemnify the owner under the policy does not arise. In fact, in the present claims the respective injured-claimants along with some others were traveling as unauthorized passengers in the lorry driven by the R.4 of claim petition belongs to the R.5 of claim petition insured with the appellant-3rd respondent, and tanker was driven by R.1 of claim petition belongs to R.2 insured with R.6 and the two vehicles i.e. tanker dashed against the lorry. Thus the respective claimants are concerned, once they are unauthorized passengers, the risk is not covered under the policy, When such is the case, the Insurer-R.3 (appellant herein) cannot be made liable but for if at all the remaining respondents i.e. R.1 and R.2 along with R.4 to R.6 of the claim petition. Thereby the fixing of liability on the Insurer–R.3(appellant) of the two claims is unsustainable.

5. In the result, both the appeals are allowed by exonerating the appellant/insurer (3rd respondent of the claim petition) in both the appeals from liability. Rest of the terms of award relating to above claim petitions holds good. Consequently, miscellaneous petitions, if any, pending in these appeals shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:09.02.2016
Vvr

[1] (2003) (1) ACJ 1

[2] 2013(2) SCC 41

[3] 2013(11) SCC 554

[4] 2013 ACJ page 1