

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

MACMA No.1969 of 2014

JUDGMENT:

Aggrieved by the Award dt. 29.01.2010 passed by the Chairman, MACT–cum-VIII Additional District Judge at Guntur, awarding compensation of Rs.86,200/- against respondent No.1/owner alone while exonerating the respondent No.2/insurance company, the claimant filed the instant MACMA.

2. The factual matrix of the case is thus:

On 16.07.2008 when the claimant and some others were traveling in the Auto bearing No. AP 07 TU 2528 from Guntur to Bhadrupalem and when the auto reached near Annavaram Village, the driver of the auto drove the vehicle in a rash and negligent manner and lost control over it and thereby it was turned turtle causing injuries to the claimant and other passengers. The claimant, on the plea that the accident was occurred due to the fault of the auto driver, filed MVOP No.928 of 2008 and claimed Rs.1,00,000/- as compensation under Section 163-A of MV Act against respondent Nos. 1 and 2, who are owner and insurer of the offending vehicle.

3. The respondents contested the claim. Respondent No.1 took the plea that his vehicle was insured with respondent No.2/insurance company and hence, it is liable to pay compensation. Whereas, respondent No.2 contended that unless the claimant establishes that he

suffered injuries due to the fault of the driver of the auto and the auto was insured with it during the relevant period, no liability cannot be fastened on it.

4. During trial, PWs. 1 and 2 were examined and EXs. A.1 to A.6 and Ex.X.1 were marked on behalf of claimant. No oral or documentary evidence was adduced on behalf of respondents.

5. The lower Tribunal, upon perusal of oral and documentary evidence and on the findings that the accident was occurred due to the fault of the driver of the auto and the claimant suffered injuries, awarded compensation of Rs.86,200/- with costs and interest at 8% per annum against respondent No.1/owner. However, the lower Tribunal exonerated the insurance company on the finding that the claimant failed to establish that his vehicle was insured with respondent No.2 during the relevant period of accident.

Hence, the instant appeal.

6. Pending appeal, the appellant filed M.A.C.M.A.M.P.No.1707 of 2014 and produced a photostat copy of the policy and prayed this Court to receive the same as additional evidence and the said petition is allowed today and the Policy copy is marked as Ex.A.7.

7. The main plank of argument of the learned counsel for the appellant/claimant is that since Ex.A.7 manifest that the crime vehicle was covered with insurance by the date of accident, the liability may be fixed on insurance company also.

8. Learned counsel for respondent No.2/insurance company fairly conceded that the policy was in force by the date of accident.

9. Now, the point that arises for determination is :

‘ Whether the liability can be fastened with second respondent/insurance company ?

10. **POINT:** A perusal of Ex.A.7 shows that the auto bearing No. AP 07 TU 2528 was insured by respondent No.1 with respondent No.2 for the period covering from 5.04.2008 to 4.04.2009 and it covered the risk of the driver and three passengers. The accident in this case was occurred on 16.07.2008 and the claimant travelled in the capacity of the passenger. Thus, it is clear that the terms of the policy would squarely cover the risk of the claimant. Therefore, the insurance company is also liable along with respondent No.1.

11. In the result, this MACMA is allowed with costs and the award passed by the lower Tribunal is modified to the effect that while maintaining the compensation awarded by the tribunal, respondent Nos. 1 and 2 in the OP are jointly and severally held liable to pay compensation and they are directed to deposit the compensation amount within two months from the date of this Judgment, failing which, execution can be taken against them.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 05.12.2016

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Dt.05.12.2016

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