

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
MACMA Nos.2711, 2712 OF 2009 and MACMA No.1561 of 2016

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COMMON JUDGMENT:

The 2nd respondent-Insurer of the auto bearing No.AP 7 V 6695 out of four respondents including owner and Insurer of the bus bearing No.AP 9 Y 0036 of the three claims viz; M.V.O.P.No.721 of 2007 filed by wife and mother of the deceased by name Sriramulu (MACMA No.2711 of 2009) M.V.O.P.No.722 of 2007 filed by father, mother and two sisters of deceased by name Dodla Nagweshwar Rao(MACMA No.2712 of 2009) and M.V.O.P.No.534 of 2007 filed by the injured by name Raja Sampat Kumar(MACMASR No.29827 of 2010, where the delay of 354days condonation application in MACMAMP No.3783 of 2010 since allowed for sufficient cause assigned for the delay) preferred these three appeals against the respective awards dated 13.10.2008 (MACMA Nos.2711 and 2712 of 2009) and 06.04.2009 (MACMASR No.29827 of 2010) passed by the learned Chairman, Motor Accidents Claims Tribunal–cum-XVIII Addl. District & Sessions Judge, Guntur in MVOP Nos.721 and 722 of 2007) and X Addl. District & Sessions Judge, Guntur in M.V.O.P.No.534 of 2007 (for short, ‘the Tribunal’). The Tribunal passed the respective awards by fixing 50% liability on the owner(R.1) and Insurer(appellant/R.2) of the crime auto bearing No.AP W 6695 of the claim petitions with pay and recover direction from the 1st respondent-owner by the 2nd respondent-Insurer; and the other 50% liability on the owner(R.3) of bus bearing No.AP 9 Y 0036 and its Insurer(R.4).

2. The common contentions in the grounds of the three appeals are that the compensation granted by the tribunal is excessive and exorbitant, that the tribunal failed to see that as against the capacity of 3 passengers, the driver allowed 11 passengers to sit and travel in the auto which is self violation and for which the appellant is not liable, that the tribunal failed to see that the driver of the crime vehicle was not

having valid driving licence at the time of accident and hence to set aside the respective awards and exonerate the appellate-Insurer of the Auto from any liability.

3. Heard the learned counsel for the appellant-Insurer of the auto in three appeals and also heard the learned counsel for the claimants in the appeals MACMA Nos.2711 and 2712 of 2009. The appeal against the 1st respondent of the appeal-claimant is dismissed for default. The owner and Insurer of the bus are endorsed as not necessary parties to the appeal in MACMA Nos.2711 and 2712 of 2009. In the unnumbered appeal the owner of the bus even impleaded and dismissed for default, for remained exparte before the tribunal that is no way fatal to the maintainability of the appeal vide M.Chakra Rao v. Y.Baburao ^[1] and in the three appeals the owner of the auto served but failed to attend and hence taken as heard. Perused the material on record.

4. Three appeals are taken up for common disposal as they arise from the same accident.

5. So far as fixing of the liability concerned, even Section 168 of the M.V.Act enables the tribunal to fix, though need not from they are the joint tort features in fixing the liability by apportionment of equal negligence shown of drivers of the auto and the bus at 50% each; The auto is insured with the appellant and it is undisputedly covered by the policy. So far as to fixing of liability for composite negligence of drivers of the two vehicles and also on the quantum concerned also practically there is nothing to interfere so also the rate of interest awarded at 7.5% p.a.

6. So far as the fixing of the liability of pay and recover on the appellant herein that is sought for exoneration concerned, it is a case from the overloading more than double the capacity as one of the basic

violations of the terms of the policy from the permit violation. The tribunal when once found the basic violations of the terms of the policy from the permit violations and referred the expressions of the Apex Court and two other expressions of this Court in the respective awards, to the extent of pay and recovery, there is nothing to interfere but for to clarify the pay and recover with directions.

7. Accordingly and in the result, all the appeals are allowed in part by confirming the quantum of compensation, fixing of liability of contributory/composite negligence and rate of interest, however by clarifying the pay and recover directions as follows:

The appellant-Insurer of the auto to pay first to the respective claimants and then to recover from the 1st respondent-owner of the auto. The 2nd respondent-appellant shall deposit his portion of respective amounts in respective O.Ps. as ordered by the tribunal within one month from today, failing which the respective claimants can execute and recover. It is made clear that the appellant herein is entitled while depositing the amount payable, if not deposited or paid any amount so far, to deposit what is due and to approach the Tribunal to direct the RTA concerned not to register any transfer of the respective vehicle and to seek for attachment of the crime auto or other property of the auto owner insured as an assurance for execution and recovery in the same proceedings or under revenue recovery as per the MV Act, 1988 and also ask the Tribunal not to disburse the deposited amount to respective claimants (but for to invest in a bank) till such attachment order is made. If sought for within two months from date of receipt of this common judgment. However, after the same, the Tribunal shall not withhold the amount of the claimants, if there is any necessity to permit for any withdrawal but for to invest the balance in fixed deposit in a nationalized bank. Rest of the terms of the awards of the Tribunal holds good. There is no order as to costs.

8. Consequently, miscellaneous petitions, if any, pending in these appeals shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 29.01.2016
Vvr

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