HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.2063 AND 1391 OF 2009

COMMON JUDGMENT:

Heard Sri Ravi Shankar Jandhyala, learned standing counsel for M/s. National Insurance Company Limited, the appellant in both these appeals and arrayed as respondent No.2 in original claim petitions. Though, notices were served on respondent No.1 - petitioner and respondent No.2, owner of the vehicle, in the former appeal, none appears for them. Non-service of notice on respondent No.2 in the latter appeal, owner of vehicle is of no consequence as service on him was completed in the former appeal i.e., MACMA No.2063 of 2009.

2. By separate orders, both dated 09-01-2007, in O.P. Nos.412 and 410 of 2002, the learned Chairman, Motor Accident Claims Tribunal - cum - V Additional District Judge (Fast Track Court), Ongole (for short 'the Tribunal'), awarded compensation amounts of Rs.26,530/- and Rs.47,289/-, respectively, with interest at 7.5% per annum thereon as against the claim of Rs.1,00,000/- each laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by respective respondent No.1 herein for the injuries they sustained in a road accident while travelling in a lorry bearing registration No.AP 27T 7504.

3. In both the appeals, respondent No.2 and the appellant herein, who are owner and insurer of the aforementioned lorry, are

respondent Nos.1 and 2, respectively, while respondent No.1 is the petitioner in the aforesaid OPs before the Tribunal.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the O.Ps.

5. Their case is that, on 22-06-2002, respective petitioners being brothers having sold their sheep and rams at Chilakaluripet returning to their house with household articles and boarded the said lorry insured with respondent No.2 and when it reached Gullapalli village on National Highway No.5, the driver of the said lorry since drove it in a rash and negligent manner dashed an RTC bus coming in opposite direction, due to which, they sustained injuries. According to them, they were admitted in Dr. Ramarao Hospital. Concerned police also registered a case against the driver of lorry. The petitioners also referred to the injuries sustained by them, such as, fractures, tongue being cut to one of the injured and, thus, claimed Rs.1,00,000/- each towards compensation.

6. Respondent No.1, owner of the lorry, remained *ex parte* before the Tribunal.

7. Respondent No.2 - Insurer opposed the claim by filing a counter. Specifically pleading that the petitioners were unauthorized passengers and, therefore, no liability can be fastened on Insurance

Company and, thus, sought to dismiss the claim petitions against the insurer.

8. The Tribunal having framed three issues in both the claim petitions basing on the pleadings raised by the rival parties, examined the petitioner in O.P. No.410 of 2002 as PW.1 and the doctor as PW.2 in both the claim petitions, and marked Exs.A-1 to A-5 on behalf of the petitioner in O.P. No.412 of 2002 and Exs.A-1 to A-4 in O.P. No.410 of 2002. On behalf of respondent No.2 in both the claim petitions, its official from local branch was examined as RW.1 and marked Exs.B-1 and B-2, which are copies of insurance policy and indemnity bond respectively.

9. The Tribunal, on appraisal of evidence, recorded findings favouring the petitioners and awarded compensation as mentioned in the above by referring to the ruling of the Hon'ble Supreme Court in **National Insurance Company Limited v. Bommithi Subbayamma & others**[1] [Review Petition (C) No.935, dated 21-02-2004] while meeting the stand of the Insurance Company that the petitioners were unauthorized passengers or gratuitous passengers travelling in a goods vehicle and, thus, passed the order. But, however, while disposing the claim petitions, fixed joint and several liabilities on both the respondents, somehow, sidelining the law laid down in the ruling

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referred to by it merely on the ground that the petitioners have denied that they were not gratuitous passengers.

10. The learned standing counsel for the appellant - Insurer, would contend that it is a clear case as projected by the petitioners themselves, that they were gratuitous passengers as they were travelling in a goods vehicle at the relevant time and the Tribunal despite referring to **Bommithi Subbayamma's Case** (Supra) without assigning any reason, has fastened joint liability on the Insurance Company, which, certainly, suffers from legal infirmity and, therefore, interference is warranted.

11. *Ex facie*, the order under challenge reflects that the Tribunal went wrong in fastening joint liability on the Insurance Company. The Tribunal despite referring to **Bommithi Subbayamma's Case** (Supra) and also the fact-situation occurring in the present claim petitions ought not to have fixed joint liability on Insurance Company and even initial liability does not arise as the Hon'ble Supreme Court while dealing with the decision in **Bommithi Subbayamma's Case** (Supra) exercised the power under Article 142 of the Constitution of India. Therefore, interference is warranted as there is merit in the present appeals.

12. Hence, both the appeals are allowed and, accordingly, order and decree, dated 09-01-2007, in O.P. Nos.412 and 410 of 2002 are set aside exempting the appellant - Insurance Company, which is

respondent No.2 in the claim petitions from its liability to pay the compensation as no indemnity does arise to indemnify the owner of the vehicle, while confirming the orders under challenge so far as the liability of the owner of the vehicle - respondent No.1 is concerned in all respects.

As could be seen from the proceedings, while granting interim stay in MACMAMP No.3591 of 2007 in MACMA No.2063 of 2009, the appellant - insurer was directed to deposit the entire awarded amount within a period of six weeks and so also in MACMAMP No.2638 of 2007 in MACMA No.1391 of 2009. The learned counsel for appellant would state that the direction was carried out by depositing the entire amount. He also would state that the permission was not granted by this Court for withdrawal of the amounts. In case, the petitioners have withdrawn any amounts, the insurer is at liberty to recover the same from the owner of the vehicle. The petitioners are at liberty to recover the compensation from owner of the vehicle. If the amount deposited by the appellants are still lying to the credit of the claim petitions, the insurer is at liberty to take back the same.

As a sequel thereto, miscellaneous applications, if any, pending in both the appeals, stand disposed of.

A. SHANKAR NARAYANA, J

November 23, 2016.
Mgr