THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.Nos.922, 1064 & 2939 of 2012 & 1984 of 2016

COMMON JUDGMENT:

MACMA.No.922 of 2012 arises out of the order and decree in M.V.O.P.No.37 of 2010, whereas MACMA.No.1064 of 2012 arises out of the order and decree in M.V.O.P.No.38 of 2010. Both these O.Ps were rendered by the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Kurnool at Nandyal (for short, 'the Tribunal') on 03.02.2012, by separate orders and decrees. M/s. United India Insurance Company Limited - respondent No.2 in these two O.Ps preferred these two appeals aggrieved over the liability fastened on it complaining that the Tribunal failed to properly appreciate the evidence and did not take into account certain aspects in apportioning the liability, though, there has been contributory negligence occurring in the instant accidents.

2. In M.V.O.P.No.38 of 2010, the Tribunal has awarded Rs.6,55,128/- as against the claim of Rs.6,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), against which MACMA.No.1064 of 2012 is directed, whereas in M.V.O.P.No.37 of 2010, a compensation of Rs.3,57,088/- was awarded as against the claim of Rs.5,00,000/- laid under Section 166 of the Act, against which MACMA.No.922 of 2012 is filed. One other

contention raised by the Insurance Company - appellant herein is that the policy issued in relation to Tata Sumo bearing No.AP 28 J 6336, belonging to respondent No.1, involved in the accident contains restriction fixing the coverage of risk limiting it to Rs.1,00,000/-.

3. MACMA.No.2939 of 2012, preferred by M/s. United India Insurance Company, and MACMA.No.1984 of 2016, preferred by the claimant, are directed against one and the same order and decree, dated 29.02.2012, in M.V.O.P.No.171 of 2010, but passed by a different Court that being the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge (Fast Track Court), Kurnool at Nandyal. The same ground, which is agitated in MACMA.Nos.922 & 1064 of 2012, is agitated in MACMA.No.2939 of 2012. However, in MACMA.No.1984 of 2016, the ground of restricted liability under the policy is raised, since the learned V Additional District Judge, Kurnool at Nandyal, took the view, that the risk coverage was limited to Rs.1,00,000/- and, therefore, though, the claimant was entitled to more than that amount, restricted the compensation to Rs.1,00,000/- as against the claim of Rs.4,00,000/-.

4. Heard Sri V.Srinivasa Rao assisting Smt.A.Malathi, learned counsel for M/s. United India Insurance Company Limited - appellant in MACMA.Nos.922, 1064 & 2939 of 2012, Sri G.Vasantha Rayudu, learned Standing Counsel for M/s.New India Assurance

Company Limited – 4th respondent in all these three O.Ps, and Sri K.Ratanga Pani Reddy, learned counsel for the claimants in all these four appeals.

5. The details mentioned in the above would make it abundantly clear that one Tribunal, which rendered the orders and decrees in M.V.O.P.Nos.37 & 38 of 2010 relating to the appeals in MACMA.Nos.922 & 1064 of 2012, either overlooked or did not accept the restricted liability under the policy and granted compensation of more than Rs.1,00,000/- in both the claim petitions, whereas, the other Tribunal, which rendered the claim petition in M.V.O.P.No.171 of 2010, adhered to the so called restriction contained in the policy and limited the compensation to Rs.1,00,000/- in M.V.O.P.No.171 of 2010, challenging which order and decree the appeals in MACMA.Nos.2939 of 2012 and 1984 of 2016 have been preferred by the Insurance Company and the claimant, respectively. Yet another infirmity, which came to light during the course of arguments tendered in these appeals, is, that, though, the policy was not exhibited in M.V.O.P.No.171 of 2010, which constitutes primary evidence, overlooking the same and just basing on the evidence of R.Ws.1 and 2, the other Tribunal passed the order granting compensation of Rs.1,00,000/- mentioning the restricted risk liability

clause contained in the policy referring to the policy even, which is extraneous observation.

6. In the above facts and circumstances and also considering the fact that conflicting orders have been rendered by two different Courts touching the restricted liability contained in the policy issued by M/s. United India Insurance Company, which is the appellant in three of these appeals, these matters require remand for fresh consideration. However, it would be reasonable to direct the Principal District Judge, Kurnool, to pass appropriate orders withdrawing the claim petition/claim petitions to make over to one and the same Tribunal to avoid such conflicting decisions being rendered. The Tribunal, which disposes of all these three claim petitions afresh on being made over by the Principal District Judge, Kurnool, shall frame appropriate issue touching restricted liability agitated by M/s. United India Insurance Company Limited in its counter in M.V.O.P.No.171 of 2010 by way of amendment.

7. Accordingly, these appeals are allowed setting aside the orders and decrees under challenge and the matters are remitted as indicated above. Since the claim petitions relate to the year 2010, it is desirable to give a direction to dispose of these three claim petitions within a period of six months from the date of receipt of a copy of this judgment. If any amounts are withdrawn in these three claim petitions,

the Tribunal shall pass appropriate orders while disposing of the claim petitions.

8. As a sequel thereto, miscellaneous applications, if any pending in these appeals, shall stand closed. There shall be no order as to costs.

JUSTICE A.SHANKAR NARAYANA

17.09.2016
v v