

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
M.A.C.M.A. Nos.889 and 888 OF 2016

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COMMON JUDGMENT:

These are the two appeals maintained by the insurer impugning the awards passed on 20.07.2011 in O.P. Nos.610 and 613 of 2006 on the file of Motor Accidents Claims Tribunal-cum-V Additional District Judge (FTC), at Kothagudem, which two claims are maintained by two injured claimants claiming compensation of Rs.75,000/- each against owner and insurer of the DCM Van bearing No.AP 7U 4473, the Tribunal awarded with joint liability of Rs.31,500/- in O.P. No.610 of 2006 and Rs.29,500/- in O.P. No.613 of 2006. It is impugning the said quantum and fixing liability on the insurer, the two appeals are maintained.

2) Heard learned standing counsel for appellant. Respondent No.2—owner of the vehicle remained ex parte before the Tribunal and even impleaded in the appeal (MACMA SR No.8599 of 2012) notice returned as left, hence it is sufficient service, taken as heard and in the appeal (MACMA SR No.8605 of 2012) though substitute service ordered steps were not taken and that the dismissal is no way fatal to the maintainability of the appeal vide **Meka Chakradhara Rao vs Yelubandi Babu Rao**^[1] and

the same is recorded.

3) The very claim petition averments are two claimants among others being agriculturists engaged a DCM van bearing No.AP 7U 4473 of respondent No.1 to the claim petition insured with 2nd respondent to claim petition and appellant herein to transport the mirchi bags to Khammam Market and after loading the mirchi bags, the claim petitioners along with others while proceeding towards Khammam and when they reached near Macharla Cross Road at about 01.00 hour, the driver of the van drove the same in a rash and negligent manner, as a result the DCM van turned turtle and the inmates of DCM van sustained injuries. In fact there is no any additional coverage of risk more than one person even under the Act policy under Section 147 (1) of the M.V Act that covers for one owner or attender of the goods to travel by sitting in cabin. Here two persons, who were traveling in DCM van sustained injuries, filed two separate claims.

4) The Tribunal gravely erred in the absence of covering additional risk coverage by contractual liability under Section 147 of the M.V Act in fixing liability jointly against the insurer. In fact there is nothing to show they are travelling in the cabin that contributed to the accident with any overloading. However, where there are more than one claim the

insurer's liability can be limited to the highest claim as per the settled expression of the Apex Court in **NIC vs Anjana Shyam**^[2] there the claim is that over loading passengers of the bus with more than seating capacity and the claimants are more than seating capacity, the principle was laid down by the Apex Court which equally applies herein.

5) Now coming to the respective quantum of compensation, there are no appeals or cross objections by the claimants, it is impugning the liability by the insurer from the principle of Anjana Shyam supra, the insurer's liability under the Act policy to cover the risk of one of the owner or attender of the goods and not because of many persons engaged, many can travel, the highest claim is covered in O.P. No.610 of 2013 of Rs.31,500/- for which the insurer is liable and in the other claim for Rs.29,500/- the insurer cannot be liable. However, once the insurer made liable for the highest claim and the other claim to fix liability on the owner for what liability fixed on the insurer in proportionate to the compensation awarded in the claims be apportioned equally for the claim fixed on the owner in proportion to the claims to be apportioned.

6) Accordingly, the appeals are disposed of directing the Tribunal to apportion the liability and disburse what the insurer is liable for the highest

claim of Rs.31,500/- among two claims in proportion to the other claims awarded and the rest to recover from the owner in proportion to the claims. There is no order as to costs.

7) Consequently, Miscellaneous petitions, if any pending in the appeals, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.22.01.2016
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[\[1\]](#) 2001 (1) ALT 495 DB

[\[2\]](#) 2007 (7) SCC 445