SMT. JUSTICE T.RAJANI

MACMA. Nos.1285, 1775, 1736, 1731, 1703 and 1730 of 2006

COMMON JUDGMENT:

MACMA. No.1285 of 2006 is filed by the appellant, who is the claimant before the lower Court assailing the judgment of the Chairman, Motor Accidents Claims Tribunal, Guntur, IV Additional District Court passed in MVOP No.287 of 2002 on 01.12.2005 only on one ground that the lower Court did not award just compensation.

Heard the learned counsel on either side.

At the hearing, the learned counsel for the appellant-claimant contends that the lower Court in spite of observing that the claimant is entitled to Rs.1,50,000/- awarded only Rs.1,00,000/- as the claimant claimed only Rs.1,00,000/-. He also relies on judgment delivered in the case of **NAGAPPA v. GURDWAL SINGH**[1] wherein the Apex Court held that the Court has a duty to award just compensation and the same can be over and above the amount claimed by the claimant. Hence, going by the above ratio the compensation is awarded to Rs.1,50,000/-. The claimant shall pay Court fee on the enhanced amount. The award shall relate back to the date of the decree and the enhanced amount shall carry interest at the rate specified and from the time indicated in the award of the Tribunal.

The other appeals i.e. MACMA Nos.1775, 1736, 1731, 1703 and 1730 of 2006 are preferred by the National Insurance Company Limited, which is arrayed as respondent No.2 in the lower Court, assailing the judgments dated 01.12.2005 and 30.11.2005 on the ground that no liability can be fastened against the Insurance Company in view of the

[1] 2003(1) TAC 241 (SC)

fact that the injured and deceased were traveling as a gratuitous passengers.

He also submits that the appeals preferred by the National Insurance Company are covered by the judgment made by this Court in MACMA No.1776 of 2006, which arises out of the same accident wherein, the learned single Judge going by the ratio laid down in **NATIONAL INSURANCE CO. LTD. V. BALAKRISHNAN AND ANTOHER**[2] concluded that the risk of the passengers is not covered by the policy, which is an "Act policy" and thereby exonerated the Insurance Company from its liability.

The Apex Court in two supra held as under:

> "In view of the aforesaid factual position, there is no scintilla of doubt that a 'comprehensive/package policy' would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an 'Act policy' stands on a different footing from a 'comprehensive/package policy'. As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a 'comprehensive/package policy' covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the 'Act policy' which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a 'comprehensive/package policy', the liability would be covered. These aspects were not noticed in the case of *Bhagyalakshmi*[3], and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is

[2] 2013 ACJ 199
[3] (2009) 7 SCC 148

> presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by Delhi High Court and we have also reproduce the same."

The counsel for the respondent-claimant, does not dispute that the injured/deceased were traveling in the passenger crime vehicle. The other contention raised by the appellant-Insurance Company, herein was raised in the above referred case and it was held that the driver did not have valid driving license as on the date of the accident. Hence, in view of the above, the appellant, Insurance Company has to be exonerated from the liability.

In the result, the appeals preferred by the Insurance Company i.e. MACMA Nos.1775, 1736, 1731, 1703 and 1730 of 2006 are allowed setting aside the liability fixed against it. If any amount is deposited by the Insurance Company, it shall be recovered from the owner of the vehicle. The claimants may claim rest of the amount awarded by the Tribunal from the owner of the vehicle.

MACMA. No.1285 of 2006 is allowed with proportionate costs.

Miscellaneous petitions, if any, pending in these appeals, shall stand closed.

JUSTICE T.RAJANI

Date: 23.06.2017
LSK