

THE HONOURABLE MS JUSTICE J.UMA DEVI

M.A.C.M.A.NOs.588 OF 2010 AND 2792 OF 2011

COMMON JUDGMENT:

MACMA.No.588 of 2010 is filed by the New India Assurance Company Ltd, which has been arrayed as second respondent in M.A.T.OP.No.901 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District and Sessions Judge (FTC), Khammam.

The claimants in M.A.T.OP.No.901 of 2004 filed MACMA.No.2792 of 2011 questioning the award passed in the aforementioned OP.

The contention of the Insurance Company in MACMA.No.588 of 2010 is that the learned trial Judge, without taking into consideration of the fact that the claim against the insured was dismissed due to non-payment of batta, made it liable to pay compensation.

The contention of the appellants in MACMA.No.2792 of 2011 is that the learned trial Judge had erred in dismissing the claim against the first respondent, who is the owner of the crime vehicle. As per their contention, the learned trial Judge, without deciding the restoration petition filed by the appellant seeking to restore the dismissal order passed against the vehicle owner, had passed the award against the Insurance Company, though the presence of the owner to decide the insurable interest is necessary. These are the contentions raised by the appellants in both the appeals.

In the award passed by the Court below, it is mentioned that *“the claim against the first respondent was dismissed. Therefore, the compensation is payable by the second respondent, who is the*

New India Assurance Company Limited". The main contention of the appellant in MACMA.No.2792 of 2011 is that they have filed the application seeking to set aside the dismissal order passed against the first respondent, who is the owner of the crime vehicle.

But the Court below, without disposing of their application, had disposed of M.A.T.OP.No.901 of 2004 making the Insurance Company alone liable to pay compensation to them. It is only after a decision is taken regarding the liability of the vehicle owner, the question of fastening of liability as against the insurer will arise. As the award is passed without disposing of the application filed for restoration of the dismissal order passed against the vehicle owner, on merits, as per the information furnished by the counsel for the appellant, the same needs to be set aside and the matter is to be remanded back to the Court below for fresh disposal.

In view of the above, both the appeals are allowed setting aside the impugned order passed in M.A.T.OP.No.901 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District and Sessions Judge (FTC), Khammam. It is needless to say that the Court below is required to dispose of M.A.T.OP.No.901 of 2004 afresh. As the OP is of the year 2004, it is to be disposed of by the Court below, as early as possible, preferably within a period of six (6) months from the date of receipt of a copy of this order. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(J.UMA DEVI, J)

15th December 2018
RRB