

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMAMP No.6091 OF 2014

(I.A.No.1 of 2014)

AND

MACMA NO. 4212 of 2014

COMMON JUDGMENT:

MACMAMP No.6091 OF 2014 (I.A.No.1 of 2014) is filed by the claimants to vacate the interim stay granted on 18.09.2014 and permit them to withdraw the deposited amount. At the stage of hearing the vacate stay petition, both sides requested the Court to pass orders in the appeal and hence, the matter is taken up for hearing finally.

It is the case of death where the claimants contended that the deceased D.Madhunaiah is the owner-cum-driver of the lorry bearing No.AP 27 X 0225 and on the fateful day, the brother of the deceased was driving the lorry and while getting into the lorry, the deceased got into contact with the gate and fell down and the lorry tyres ran over him, leading to his death. Aggrieved thereby, O.P.No.209 of 2012 was filed before the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-VI Additional District Judge, Godavarikhani (for short 'the tribunal') by the claimants claiming compensation of Rs.6,00,000/- and that the tribunal after examining PW.1, the wife of the deceased and marking Exs.A.1 to A.6, for claimants and after examining RW.1 for respondent and marking Ex.B.1 – copy of policy, awarded compensation of Rs.6,31,000/-, which shall be payable jointly and severally by

respondents 1 and 2. Aggrieved thereby, the present appeal is filed.

Sri T. Mahender Rao, learned standing counsel appearing for the Insurance Company submitted that this appeal is filed way back in September, 2014 and the same is taken on record and interim stay was granted on 18.09.2014 subject to condition that the Insurance Company shall deposit half of the awarded amount in M.A.C.M.A.M.P.No.4474 of 2014 and accordingly, the said orders have been complied with. Further learned standing counsel contended that it is evident from the complaint, Ex.A.1-FIR, Ex.A.2-inquest report and Ex.A.4-charge sheet that the deceased is the owner-cum-driver of the lorry and hence, the claimants cannot seek any compensation from its own insurer and prayed to allow the appeal by setting aside the orders passed in OP.

Learned counsel for the claimants contended that Ex.A.5-c.c. of MVI report and E.A.6 – c.c. of Form 54 shows the name of the owner as Gouse Basha – respondent No.1 and that Ex.B.1 – policy was in the name of the 1st respondent and thus, the claimants are entitled for the compensation. It is further contended by learned counsel that PW.1 is illiterate lady and that innocently she has deposed in her evidence and also stated in the complaint that the deceased is the owner of the lorry under the assumption that the lorry was in front of their house for quite long time and she presumed that it is their own lorry.

In reply, learned standing counsel for the Insurance Company contended that merely depending upon the innocent statement of PW.1 that the deceased is the owner of the lorry, it cannot be concluded that the deceased is the owner of the lorry, but when the investigation reports categorically indicate that the deceased is the owner of the lorry, it has to be reasonably presumed that the deceased having purchased the lorry, the 1st respondent has not transferred the same in the name of the deceased and thus, the reports are continued in the name of the 1st respondent. However, as and when the lorry is transferred, the policy along with the lorry gets transferred in favour of the new owner and the deceased being owner/insured cannot claim compensation against his own insurance company/insurer.

This appeal is filed by the Insurance Company contending that PW.1-complainant, who is the wife of the deceased categorically stated that the deceased is the owner-cum-driver of the lorry, but on the fateful day, the brother of the deceased was in the driving seat and that the accident took place. Since there is equal force in the argument of both sides, the issue has to be decided on the facts where the gap needs to be filled up only through proper investigation with regard to the ownership of the lorry on the date of accident and it has become necessary to investigate into the matter. If the lorry belongs to the deceased, it becomes necessary to find out as to when the 1st respondent alienated/transferred the lorry in favour of the deceased and therefore, the appeal is liable to be allowed and remanded to the tribunal for fresh disposal directing the tribunal whether the 1st

respondent alienated/transferred the lorry bearing No.AP 27 X 0225 or not in favour of the deceased by calling report from the concerned authority.

In view of the above, the appeal is allowed setting aside the order and decree dated 13.02.2014 passed in O.P.No.209 of 2012 by the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-VI Additional District Judge, Godavarikhani and remanded for fresh disposal directing the tribunal to dispose of O.P. as expeditiously as possible on merits since the accident pertains to the year 2010, after giving opportunity to both sides, in accordance with law. Accordingly, MACMAMP No.6091 of 2014 (I.A.No.1 of 2019) is closed. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

T.AMARNATH GOUD,J

Date: 28.11.2019
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