THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.3519 OF 2005
AND
M.A.C.M.A.No.3530 OF 2005

COMMON JUDGMENT:

MACMA Nos.3519 and 3530 of 2005 are filed by the insurance company against the common order dated 18.09.2003 passed by the Motor Accidents Claims Tribunal-cum-Principal District Judge (for short 'the Tribunal') in O.P.Nos.1150 and 1151 of 2002 granting compensation of Rs.15,000/- in each petition as against the claim of Rs.75,000/- in each petition.

2. Since both the appeals arise out of the same accident, they are heard together and disposed of by way of this common judgment. The petitioners are driver and pillion rider.

3. It is the case of the petitioners that when they were going on Kinetic Style Moped, near local Bus Stand, Hanamkonda, one Ambassador Car bearing No. AP 9 V 9163, driven by its driver in a rash and negligent manner, dashed against the petitioners' moped, due to which, the petitioners received multiple injuries and were treated in the hospital.

4. It is the contention of the insurance company that as on the date and time of the accident, the crime vehicle was not insured with the insurance company and therefore, prayed to exonerate the insurance company from the liability in paying the compensation amount and that the compensation granted by the tribunal is excessive and untenable.

6. Admittedly, the accident occurred on 17.04.2002 at 10.30 a.m and the crime vehicle got insured with the insurance company on 17.04.2002 at 02.15 p.m. Since the crime vehicle is not covered with the valid policy

at the time of accident, fastening liability on the insurance company cannot be sustained as per the judgments of the apex Court in **National Insurance Company Limited v Jikhubhai Nathuji Dabhi**[1] and **Oriental Insurance Company Limited v Sunita Rathi**[2]**.** In the above judgments, the Apex Court dealt with the identical situation that in the absence of the policy, there is no valid contract and hence, obligation on the part of the insurance company to pay the compensation with regard to the claim has been exonerated. Therefore, this Court is of the view that the insurance company is liable to be exonerated.

5. In view of the above, M.A.C.M.As. filed by the Insurance Company are allowed setting aside the common order dated 18.09.2003 passed by the Motor Accidents Claims Tribunal-cum-Principal District Judge exonerating the insurance company from its liability. However, liberty is given to the injured claimants to proceed against the owner of the crime vehicle, if they choose. There shall be no order as to costs.

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

T.AMARNATH GOUD,J

DATE 30.08.2019
kvrm

[1] 1997(2) SCC 66
[2] 1998(1) SCC 365