

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA No. 3537 OF 2005,
MACMA No. 3576 OF 2005,
MACMA No. 135 OF 2006,
AND
MACMA No. 251 OF 2009

COMMON JUDGMENT:

Since these appeals arise out of the same accident, they are taken up together and disposed of by way of this common judgment.

MACMA No.3537 of 2005 is filed by the insurance company against the common order dated 13.01.2004 passed in O.P.No.1255 of 2002 by the Motor Vehicle Accidents Claims Tribunal-cum-District Judge, Warangal awarding compensation of Rs.12,000/- as against the claim of Rs.40,000/-.

MACMA No.3576 of 2005 is filed by the insurance company against the common order dated 13.01.2004 passed in O.P.No.1254 of 2002 by the Motor Vehicle Accidents Claims Tribunal-cum-District Judge, Warangal awarding compensation of Rs.20,000/- as against the claim of Rs.50,000/-.

MACMA No.135 of 2006 is filed by the insurance company against the common order dated 13.01.2004 passed in O.P.No.1285 of 2002 by the Motor Vehicle Accidents Claims Tribunal-cum-District Judge, Warangal awarding compensation of Rs.15,000/- as against the claim of Rs.50,000/-.

MACMA No.251 of 2009 is filed by the insurance company against the common order dated 13.01.2004 passed in O.P.No.1252 of 2002 by the Motor Vehicle Accidents Claims

Tribunal-cum-District Judge, Warangal awarding compensation of Rs.18,000/- as against the claim of Rs.50,000/-.

The brief facts are that on 24.08.2002, when the petitioners were coming in the auto bearing No. AP 36 V 1160 from Thorrur, while the auto reached Teachers Colony, Thorrur, due to rash and negligent driving of the driver of the auto and who is also owner of the auto, turned turtle, for which the petitioners received multiple injuries and they were treated at Thorrur and thereafter at M.G.M.Hospital.

On considering the oral and documentary evidence, the tribunal vide common order partly allowed O.Ps by granting the above mentioned compensations to the petitioners with interest @ 9% per annum from the date of petition till the date of realization and ordered the respondents to pay the compensation jointly and severally.

Aggrieved by the common order passed by the tribunal, the insurance company filed these appeal.

Learned standing counsel for the insurance company submitted that the insurance company is not liable to pay the compensation to the petitioners since the driver of the auto permitted the passengers more than permitted. The Apex Court in **National Insurance Company Limited v K.M.Poonam and others**¹ at para 27 held as follows:

“In other words, the Appellant Insurance Company shall deposit with the Tribunal the total amount of the amounts

¹ 2011 Law Suit (SC) 544

awarded in favour of the awardees within two months from the date of this order and the same is to be utilized to satisfy the claims of those claimants not covered by the Insurance Policy along with the persons so covered. The Insurance Company will be entitled to recover the amounts paid by it, in excess of its liability, from the owner of the vehicle, by putting the decree into execution. For the aforesaid purpose, the total amount of the six Awards which are the highest shall be construed as the liability of the Insurance Company. After deducting the said amount from the total amount of all the Awards deposited in terms of this order, the Insurance Company will be entitled to recover the balance amount from the owner of the vehicle as if it is an amount decreed by the Tribunal in favour of the Insurance Company. The Insurance Company will not be required to file a separate suit in this regard in order to recover the amounts paid in excess of its liability from the owner of the vehicle.'

and also submits that the insurance company may be directed to pay the compensation amount to the extent of permitted passengers and that for excess passengers the insurance company may be permitted to pay and recover from the owner of the offending vehicle and hence, prayed to allow the appeals.

Learned counsel for the claimants contended that the common order passed by the tribunal is well considered and needs no interference of this Court.

Having regard to the facts and circumstances of the case and in the light of the above decision, the insurance company is directed to:

- i) pay the compensation amounts awarded by the tribunal in O.P.Nos.1254, 1285 and 1252 of 2002 to the claimants concerned: and
- ii) first pay compensation amount to the claimant and then recover the same from the owner of the vehicle by following due process of law in so far as O.P.No.1255 of 2002.

With the above observations, MACMAs are disposed of.
There shall be no order as to costs.

Miscellaneous petitions, if any, shall stand closed.

Date: 16.10.2019
kvrn

T.AMARNATH GOUD,J

