

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

**M.A.C.M.A. Nos.669 & 3042 OF 2016, 3081 OF 2017 &
2428 OF 2019**

COMMON JUDGMENT:

As the legal issue involved in all the appeals is one and the same, they are being disposed of by this common judgment.

M.A.C.M.A.Nos.669 AND 3042 OF 2016:

2. This appeal is filed by the appellants-claimants aggrieved by the Order and Decree dated 16.10.2015 passed in O.P.No.68 of 2010 by the Motor Accidents Claims Tribunal (District Judge) at Nizamabad (for short, Tribunal-I).

3. The brief facts of the case are that on 30-06-2009, in the evening hours, the deceased, Gaddam Ganga Reddy, went to Elkatoor village of Balkonda Mandal, Nizamabad District to meet his brother-in-law in his Maruti Alto Car bearing No.AP25R 1788. At about 9.00 pm., while the deceased was returning in the said car, and when he reached Chittapoor village, an unknown vehicle came from Armour side in a rash and negligent manner and dashed his car, as a result of which, he sustained grievous injuries. The driver of unknown vehicle fled away from the scene. The deceased was shifted to Pragathi Nursing Home, Nizamabad, where he succumbed to injuries. The claimants filed the above OP under Section 163-A of the Motor Vehicles Act, 1988 (for short, the Act) against the respondent, insurer of the aforesaid car, claiming compensation of Rs.25,00,000/- for the death of the deceased.

4. In the claim petition, the respondent-insurance company, filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral and documentary evidence on record, the Tribunal-I came to the conclusion that as the deceased, who was holding a valid driving licence under Ex.A6 died in the motor accident, the petitioners are entitled to claim compensation under Section 163-A of the Act. The Tribunal-I awarded total compensation of Rs.18,51,384/- with interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the appellants filed MACMA No.669 of 2016, seeking enhancement of the same, while the respondent filed MACMA.No.3042 of 2016, contending that the deceased is not a third party within the meaning of the Act and therefore, the appellants are not entitled to claim compensation against the own insurance company as the policy does not cover the liability of owner-cum-insured.

M.A.C.M.A. No. 3081 OF 2017

6. This appeal is filed by the appellant-insurance company aggrieved by the Order and Decree dated 20-04-2016 passed in O.P.No.478 of 2012 by the Motor Accidents Claims Tribunal (VIII Additional District Judge) at Nizamabad (for short, Tribunal-II).

7. The brief facts of the case are that respondent Nos.1 is the wife, respondent No.2 is the daughter and respondent No.3 is the mother of the deceased-Sangam Muthyam. On 24-10-2012, the

deceased Sangam Muthyam left his house at about 7.30 P.M., on his motorcycle bearing No.AP25AJ 8868 in order to meet his friend at Dattapur village on the eve of Dasara festival and in between 7.30 P.M., and 9.00 P.M., when the deceased was at Maskat Pedda Rajanna field turning point in the outskirts of Marampally, due to darkness, he could not control his vehicle and fell down from it. He sustained crush injuries and died on the spot. The respondents filed O.P.No.478 of 2013 under Section 163-A of the Act against the appellant herein, insurer of the aforesaid motorcycle, claiming compensation of Rs.8,00,000/- for the death of the deceased.

8. In the claim petition, the appellant herein filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

9. After considering the oral and documentary evidence on record, the Tribunal-II came to the conclusion that the accident had occurred out of the use of the motorcycle bearing No.AP25AJ 8868 while it was being driven by the deceased and awarded total compensation of Rs.8,37,000/- with interest @ 6% per annum. Aggrieved by the above order, the insurance company filed MACMA No.3081 of 2017, contending that the deceased is not a third party within the meaning of the Act and therefore, the respondents are not entitled to claim compensation against the own insurance company as the policy does not cover the liability of owner-cum-insured.

M.A.C.M.A.No. 2428 OF 2019:

10. This appeal is filed by the appellant-insurance company aggrieved by the Order and Decree dated 03-12-2015 passed in O.P.No.611 of 2010 by the Tribunal-II.

11. The brief facts of the case are that respondent Nos.1 is the wife, respondent Nos.2 to 4 are the daughters and respondent No.5 is the father and respondent No.6 is the mother of the deceased-Bodas Mallaiah. On 03-06-2010 while the deceased was driving his motorcycle bearing No.AP25TK TR 4443 from Thorlikonda towards Santhoshnagar at about 6.30 PM., and when he reached near Devi Temple at Thorlikonda, suddenly a bull came on the road, and in order to avert the accident, he turned his motorcycle and dashed to a culvert, due to which, he sustained fatal injuries and died while undergoing treatment in Government Hospital, Nizamabad. The respondents herein filed O.P.No.611 of 2010 under Section 163-A of the Act against the appellant herein, insurer of the aforesaid motorcycle, claiming compensation of Rs.6,00,000/- for the death of the deceased.

12. In the claim petition, the appellant herein filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

13. After considering the oral and documentary evidence on record, the Tribunal-II came to the conclusion that the accident had occurred out of the use of the motorcycle bearing No.AP25TK-

TR 4443 while it was being driven by the deceased and awarded total compensation of Rs.5,52,600/- with interest @ 6% per annum. Aggrieved by the above order, the insurance company filed MACMA No.2428 of 2019, contending that the deceased is not a third party within the meaning of the Act and therefore, the respondents are not entitled to claim compensation against the own insurance company as the policy does not cover the liability of owner-cum-insured.

14. Sri Azar Sravan Kumar, learned counsel for the appellant in MACMA.No.669 of 2016 submits that the Tribunal awarded meager amount of Rs.18,51,384/- as against the claim of Rs.25,00,000/- and therefore, the compensation awarded by the Tribunal needs to be enhanced. He further contended that in a proceeding under Section 163-A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation. In support of his contention, he relied on a decision reported in **United India Insurance Co.Ltd. V. Sunil Kumar**¹.

15. Sri A.Ramakrishna Reddy, learned counsel for the appellant in MACMA.Nos.3042 of 2016, 3081 of 2017 and 2428 of 2019, submits that in an Act policy, the first party is the owner, second party is the insured and third party is the insurer and the insured cannot be treated as third party and he cannot make claim against his own insurance company. The liability of the insurance company is to the extent of indemnification of the insured against a third person or in respect of damages of property. Thus, if the

¹ 2018 (2) ALD 36 (SC)

insured cannot be fastened with any liability under the provisions of the Act, the question of the insurer being liable to indemnify the insured, does not arise. In support of his contention, he relied on the decision reported in **Oriental Insurance Co. Ltd. V. Jhuma Saha**². He further contended that Section 163-A of the Act cannot be said to have any application with regard to an accident wherein the owner of the motor vehicle himself is involved. In support of his contention, he relied on a decision reported in **Oriental Insurance Co.Ltd. V. Rajni Devi**³. He further contended that to fasten the liability on the insurance company, the claimant is required to establish either that he is a third party or that his risk is covered under the terms and conditions of the policy. He further contended that the owner/insured cannot claim against his own insurance company for his own negligence and the owner is not a third party. In support of his arguments, he relied on a decision reported in **Dhanraj V. New India Assurance Co. Ltd.**⁴.

16. Sri P.Radhive Reddy, learned counsel for the respondents in MACMA.No.2428 of 2019, submits that the Tribunal-II passed a well reasoned order and needs no interference with the same. He further submitted that it is not open for the insurer to raise the defence/plea of negligence on the part of the victim.

17. The common point that arises in these appeals is *‘whether the owner/insured can claim compensation against his own insurance company for his own negligence?’*

² 2007 ACJ 818

³ (2008) 5 SCC 736

⁴ 2005 ACJ 1

18. It is true that in **Sunil Kumar**'s case (supra), a Full Court of the Hon'ble Supreme Court held that '*in a proceeding under Section 163-A of the Act, it is not open for the insurer to raise any defence of negligence on the part of the victim*'. But, the question involved in these appeals is different and hence, the said decision cannot help the appellant in MACMA.No.669 of 2016.

19. In **Jhuma Saha**'s case (supra), a Division Bench of the Hon'ble Supreme Court had an occasion to deal with the similar question and held that '*the liability of the insurer company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of the Act, the question of the insurer being liable to indemnify insured, therefore, does not arise*'. In **Dhanraj**'s case also (supra), another Division Bench of Hon'ble Supreme Court held that an owner of a vehicle can only claim provided a personal accident insurance has been taken out. In that judgment, the Hon'ble Supreme Court also referred to its earlier judgment in **Oriental Insurance Co. Ltd. Vs. Sunita Rathi**⁵, wherein it has been held that '*the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damages to property. Thus, where the insured, i.e., an owner of the vehicle has no liability to a third party the insurance company has no liability also*'. From the above judgments, it is clear that the liability of the insurance

⁵ 1998ACJ 121 (SC)

company is to the extent of indemnification of the insured against a third person or in respect of damages of property and the insured cannot claim compensation against his own insurance company for his own negligence in the absence of any such coverage of risk. Therefore, the point is decided in favour of the insurance company and against the appellant in MACMA.No.669 of 2016.

20. In the result, MACMA.No.669 of 2016 is dismissed and MACMA.Nos.3042 of 2016, 3081 of 2017 and 2428 of 2013 are allowed, setting aside the orders of Tribunal-I and Tribunal-II in O.P.No.68 of 2010 dated 16.10.2015, O.P.No.478 of 2012 dated 20.04.2016 and O.P.No.611 of 2010 dated 03.12.2015.

Date: 04.09.2019
L.R. Copy to be marked.
B/o. TJMR

T.AMARNATH GOUD, J

