

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA Nos. 3282 and 3658 of 2005

COMMON JUDGMENT:

Since both these appeals arise out of the same accident, both are heard together and disposed of by this common Judgment.

2. MACMA.No.3282/2005 arise out of OP.No.982 of 2001 which is filed by the claimants for the death of one Islavath Ganiya and MACMA.No.3658 of 2005 arise out of OP.No.980 of 2001 which is filed by the injured. Both, the deceased in OP.No.982/2001 and injured in OP.No.980/2001 were travelling in the same lorry which is involved in the accident.

3. The appellant in both the appeals is the National Insurance Company Limited/2nd respondent.

4. The respondents 1 to 4 in MACMA.No.3282/2005 are the claimants claiming compensation for the death of one Islavath Ganiya who is the father of respondents 1 to 3 and son of respondent No.4. Respondent No.5 is the owner of the offending lorry bearing registration No.AP-7T-2237. As far as MACMA.No.3658/2005 is concerned respondent No.1 is the claimant who was injured in the accident and respondent No.2 is the owner of the offending lorry.

5. The appellant in both the appeals filed these appeals only challenging the liability of the insurance company, but not challenging the quantum of compensation and occurrence of the accident.

6. Learned counsel for the appellant submits that the Tribunal came to a wrong conclusion that the deceased and injured were travelling in the offending vehicle as owners of the goods; that in fact, both are travelling in the offending lorry as gratuitous passengers which amounts to breach of conditions of policy, and as such, the appellant-insurance company is not liable to pay the compensation.

7. On the other hand learned counsel for the respondents/claimants submits that the Tribunal basing on the evidence of PW2-Islavath Sakru who was an eye-witness and injured in the said accident and Ex.A1- Copy of First Information Report, came to the conclusion that the deceased and injured were travelling in the offending vehicle as owners of the goods and made liable the insurance company to pay the compensation.

8. It is to be seen that before the Court below the appellant did not take any such plea that the deceased and injured were travelling in the crime vehicle as gratuitous passengers. For the first time before this Court such plea was taken by the appellant in the present appeal. Further, the Tribunal basing on the evidence of PW2 who is an eye-witness to the accident and Ex.A1-Copy of the FIR came to a conclusion that the deceased and injured boarded the offending vehicle as owners of the goods.

9. In view of the aforesaid facts and circumstances, I do not see any merit in the contentions raised by the learned counsel for the

appellant-National Insurance Company Limited and no infirmity in the impugned award. Accordingly, both the appeals are dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the appeal, stand disposed of.

A.RAJASHEKER REDDY, J

4th April, 2019
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