

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO.2952 OF 2011,
MACMA NO.3438 OF 2012,
MACMA NO.2433 OF 2013,
AND
MACMA NO.1375 OF 2014

COMMON JUDGMENT:

Since these four appeals filed by the insurance company arise out of the same accident, they are heard together and disposed of by way of this common judgment.

2. MACMA No.2952 of 2011 is filed against the order and decree dated 10.01.2011 passed by the Motor Accidents Claims Tribunal-cum-IV Additional District FTC, Khammam in M.A.T.O.P.No.737 of 2006, whereby the tribunal granted compensation of Rs.1,60,000/- with proportionate costs and interest @ 6% per annum from the date of petition till the date of realization fastening the liability on the insurance company and owner of the auto, after examining PWs.1 and 2 and marking Ex.A.1 to A.6 on behalf of the claimants and after examining RW.1 and marking Exs.B.1 to B.3 on behalf of the Insurance Company, as against the claim of Rs.5,00,000/-.

3. MACMA No.3438 of 2012 is filed against the order and decree dated 03.11.2008 passed by the Motor Accidents Claims Tribunal-cum-IV Additional District FTC, Khammam in M.A.T.O.P.No.751 of 2006, whereby the tribunal granted compensation of Rs.3,89,000/- with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of

realization fastening the liability on the respondents therein, after examining PWs.1 to 4 and marking Exs.A.1 to A.7 on behalf of the claimants and examining RW.1 and marking Ex.B.1 on behalf of the Insurance Company, as against the claim of Rs.5,00,000/-.

4. MACMA No.2433 of 2013 is filed against the order and decree dated 28.11.2011 passed by the Motor Accidents Claims Tribunal-cum-III Additional District FTC, Khammam in M.A.T.O.P.No.1307 of 2006, whereby the tribunal granted compensation of Rs.1,74,000/- with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization fastening the liability on the respondents therein, after examining PWs.1 and 2 and marking Exs.A1. to A.7 on behalf of the claimant and after examining RW.1 and marking Exs.B.1 and B.2 on behalf of the Insurance Company, as against the claim of Rs.2,50,000/-.

5. MACMA No.1375 of 2014 is filed against the order and decree dated 16.07.2008 passed by the Motor Accidents Claims Tribunal-cum-I Additional District, Khammam in M.A.T.O.P.No.562 of 2006, whereby the tribunal granted compensation of Rs.2,83,000/- with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization fastening the liability on the respondents therein, after examining PWs.1 to 3 and marking Exs.A.1 to 6 on behalf of the claimants and after examining RW.1 and marking Exs.B.1 and B.2 on behalf of the Insurance Company, as against the claim of Rs.4,50,000/-.

6. For the sake of convenience, the parties herein are referred to as arrayed in the tribunal.

7. The brief facts of the case are that Bitukuri Basava Ramulu-deceased, Ravi Kumar-deceased, Subburu Bhaskar-injured and Narasimha-deceased on 06.04.2006 after attending Durgamma Darshan, on return to their houses, boarded auto bearing No. AP 20V 4130, when they reached near hotel of Abdul Majeed, the driver of the auto drove it in rash and negligent manner, lost control over the steering, hit against lorry bearing No. AP 31 X 0279, which was parked in front of the hotel of said Abdul Majeed without taking any precautions, signals or traffic rules, Bitukuri Basava Ramulu and Ravi Kumar succumbed to injuries, Narasimha died on the spot and Subburu Bhaskar suffered injuries.

8. Learned standing counsel appearing for the Insurance Company contended that six persons were traveling in the auto, whereas seating capacity of the auto is 3 + 1, as such there is clear breach of terms and conditions of the policy and that the liability of the insurance company may be restricted to the extent of only three passengers as per the decision of the Apex Court in **National Insurance Company Limited v Anjana Shyam and others**¹ and prayed to allow the appeals.

9. Learned counsel for the claimants contended that the order passed by the tribunal is well considered and needs no interference

¹ 2007 ACJ 2129

of this Court and hence, prayed to dismiss the appeals filed by the Insurance Company.

10. There is no dispute with regard to the nature of accident and involvement of the vehicle. At the time of accident, six persons were traveling in the crime vehicle. The orders passed by the tribunal are well considered in all aspects. However, liability is to be decided in these appeals. As per insurance policy, only three passengers are allowed. At the time of accident the insurance policies of both vehicles are in force and hence, the insurance company is liable to pay compensation to the claimants in MACMA Nos.3438 of 2012, 2433 of 2013 and 1375 of 2014 since only three passengers are allowed as per the policy. In so far as MACMA No.2952 of 2011, the Insurance Company shall pay compensation at first to the claimants and recover the same from the owners of the auto and lorry in question.

11. In view of the above, MACMA Nos.3438 of 2012, 2433 of 2013 and 1375 of 2014 are dismissed and MACMA No.2952 of 2011 is partly allowed directing the Insurance Company to pay compensation first to the claimants and then recovery the same from the owners of the auto and lorry in question. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

T.AMARNATH GOUD,J

Date: 30.12.2019
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