

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**WEDNESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SMT JUSTICE LALITHA KANNEGANTI

M.A.C.M.A.NO: 553 OF 2023

Appeal Under Section 173 of Motor Vehicles Act against the order and decree in MVOP.No.195 of 2005 dated 12-09-2008 on the file of the Court of the Chairman Motor Accident Claims Tribunal – cum – Additional Chief Judge, City Civil Court, Secunderabad.

Between:

1. United India Insurance Company Ltd, Rep. by its Divisional Manager, Office at 5/328D, Sewkath Ali Street, Parampudi-623707, Tamil Nadu State (Insurer of Vehicle No.TN-49 c-4666).
2. United India Insurance Company Ltd, Rep. by its Divisional Manager, Office at 5/328D, / Sewkath Ali Street, Parampudi-623707, Tamil Nadu State (Insurer of Vehicle No.TN-49 c-4666).

...APPELLANTS/

2nd & 3rd RESPONDENTS

AND

1. J.Ramadevi, D/o.Late Chittaranjan Das, C/o.Sri J.Krishna Murthy, H.No.6-1-282/D, 5th Street, Padmarao Nagar, Secunderabad.

.....PETITIONER/RESPONDENTS

2. S.Ravichandran, S/o.Sivasubramani, Aged. Major,Occ.Business, R/o.TOC Street, K K Nagar Madhurai Tamil Nadu State, to) (Owner of Vehicle No.TN-49 c-4666). R2 disd for default vide Court Order dated 23/2/2015.
3. Smt.S.Kanaga Ratnam, W/o.Sudarsanam, 2nd Street, Kumaran Nagar, Avadi, Chennai-600071, Tamil Nadu State (Owner of Vehicle No.TN20 D 4518).
4. The Oriental Insurance Company Ltd, rep by its Divisional Manager, Kamala Arcade, 2nd Floor, Mount Road, Chennai-600 006, Tamil Nadu State, (Insurer of Vehicle No.TN-20 D-4518)

5. The Oriental Insurance Company Ltd, rep by its Divisional Manager, Kamala Arcade, 2nd Floor, Mount Road, Chennai-600 006, Tamil Nadu State, (Insurer of Vehicle No TN-20 D-4518).

...RESPONDENTS

MACMAMP.NO:3105 OF 2010)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings including execution of award passed in O.P.No.195/05 on the file of the M/CT -Cum -Addl. Chief Judge, City Civil Court, Secunderabad, dated 12-09-08.

Counsel for the Appellants : SRI.P.GOPAL DAS

Counsel for the Respondents : SRI.A.P.RAO

The Court made the following ORDER

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

M.A.C.M.A.No. 553 of 2023

J U D G M E N T:

The United India Insurance Company Limited which is the insurer of the Tipper lorry bearing No. TN 49 C 4666 preferred this Appeal mainly questioning the liability fastened to them *vide* Award dated 12.09.2008 in M.V.O.P.No. 195 of 2005.

2. The claimant filed the O.P. claiming compensation of Rs.2,25,000/- for the death of her mother J. Kamala in a motor vehicle accident. It is her case that she along with her family members started for Rameswaram by hiring a TATA Sumo bearing No. TN 20 D 4518, when the vehicle reached Okkur Village, Sivaganga District, on 25.05.2002, another vehicle i.e. Tipper bearing No. TN 49C 4666 came in a rash and negligent manner in opposite direction and dashed the TATA Sumo. In the said accident, the claimant lost her parents, both sisters, their children and brother-in-law. The claimant also sustained grievous injuries.

3. Respondents 5 and 6 - Insurer of TATA Sumo vehicle filed their counter-affidavit stating that the accident occurred due to the negligence of the driver of the tipper, hence, they are not liable to pay the compensation. It is stated that since a case was registered against the driver of the tipper, it should be inferred that the accident occurred due to the rash and negligent driving of the driver of the tipper. It is further stated that the

liability, if any has to be restricted as per the terms and conditions of the policy. Since the claimant is an earning member she is not entitled for compensation.

4. As there was head-on-collision between the vehicles, it has to be assumed that there was negligence on the part of both the drivers. Then the burden lies on the Insurance Company to prove that the accident did not occur due to the negligence of the driver of the vehicle insured with them. As there was no evidence, the Tribunal held that both the Insurance Companies i.e. insurer of Sumo and Tipper are jointly and severally liable to pay the compensation.

5. Learned counsel for the appellant - Insurance Company of the Tipper bearing No. TN 49 C 4666 submits that the accident had happened because of the rash and negligent driving of the driver of TATA Sumo and the Tribunal without considering the said issue in its proper perspective held that the appellant Insurance Company is also liable.

6. Learned counsel for the respondent Oriental Insurance Company - insurer of Sumo bearing No. TN 20D 4518 submits that in fact, the accident has happened because of the negligent and rash driving of the Tipper and without any evidence, the Tribunal has fastened the liability as well on the driver of the

Sumo. It is submitted that without there being any evidence and without any basis, the Tribunal has come to the said conclusion.

7. In this case, there was head-on-collision. If it is the case of the insurer that there is no negligence on the part of the driver of the vehicle, they ought to have adduced necessary evidence. There is no such evidence on behalf of the Insurance Company of either of the vehicles. In the considered opinion of this Court, the Tribunal has rightly come to the conclusion that in the case of head-on-collision, the Insurance Company of both the vehicles is liable to pay the compensation. In view of the same, this Court does not find any ground to interfere with the Award passed by the Tribunal.

8. The Appeal is accordingly dismissed. No order as to costs.

9. Pending miscellaneous petitions, if any, shall stand closed.

//TRUE COPY//

SD/-T.JAYASREE
ASSISTANT REGISTRAR


SECTION OFFICER

To

1. The Chairman, MACT -Cum -Addl. Chief Judge, City Civil Court, Secunderabad. (With Records).
2. One CC to SRI.P.GOPAL DAS, Advocate [OPUC]
3. One CC to SRI.A.P.RAO, Advocate [OPUC]
4. Two CD Copies

SA

BSR

HIGH COURT

DATED: 26/04/2023

JUDGMENT

MACMA.No.553 of 2023



**DISMISSING THE M.A.C.M.A
WITHOUT COSTS.**

6
15/6/23
BSR

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This appeal coming on for hearing and upon perusing the grounds of appeal, the judgment and Decree of the Lower Court and the material papers in the MVOP and upon hearing the arguments of SRI.P.GOPAL DAS, Advocate for the Appellant and of SRI.A.P.R/O Advocate for the Respondent No.1.

That this Court doth judgment and decree that the judgment and decree of the Lower Court passed in OP.No.195 of 2005, dated 12-09-2008 be and hereby is confirmed and this MACMA is dismissed.

That there shall be no order as to costs in this M.A.C.M.A.

SD/-T.JAYASREE
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Chairman, MACT -Cum -Addl. Chief Judge, City Civil Court, Secunderabad.
2. Two CD Copies

SA

BSR

HIGH COURT

DATED: 26/04/2023

DECREE

MACMA.Nc .553 of 2023

DISMISSING THE M.A.C.M.A
WITHOUT COSTS.

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15/6/23
BSR