APHC010200392017

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

Bench
Sr.No:-51
[3584]

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 1432 of 2017

United India Insurance Co. Ltd. ...Appellant

Vs.

Kothali Bhavani and Others ...Respondent(s)

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CORAM : THE CHIEF JUSTICE LISA GILL
SRI JUSTICE CHALLA GUNARANJAN

DATE : 18th August 2026

Present:

Advocate for Appellant/insurer:	MR.RAMA MOHANA RAO KOTHA, REPRESENTING MR. SRINIVASA RAO KATAKAMSETTY
Advocate for Respondents/claimants:	MR.G SAI NARAYANA RAO

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JUDGMENT: (per Hon'ble Sri Justice Challa Gunaranjan)

Insurer preferred present appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, "the M.V. Act"), challenging the award, dated 30.08.2016, in M.V.O.P. No.155 of 2014, passed by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Vizianagaram, (for short, "the Tribunal"), by which, claimants were awarded compensation of Rs.47,34,381/- along with interest at the rate of 9% p.a.

2. For the sake of convenience, the parties hereinafter are referred to as they were arrayed in the M.V.O.P. before the Tribunal.

3. The facts relevant for disposal of the appeal are set out as under:

(a) Deceased, aged about 48 years, was working as Technical Work Inspector (R.P.), Cheepurupalli in the office of Executive Engineer, A.P.E.W.I.D.C., Vizianagaram, and drawing salary of Rs.34,720/- p.m. On 20.11.2013, while he was proceeding from office on his motorcycle, another motorcycle, driven by 1st respondent, dashed against him from opposite direction, and that deceased fell down and sustained severe injuries. He was shifted to hospital, however, he succumbed to injuries.

(b) Police registered Crime No.230 of 2013 for the offence punishable under Section 304-A of IPC against rider of offending motorcycle Hero Honda Splendor Plus. Later, charge-sheet was filed against 1st respondent.

(c) Wife and daughters of deceased preferred claim seeking compensation of Rs.40,00,000/-.

4. The rider of offending motorcycle and its owner remained *ex parte*.

5. Insurer of offending motorcycle filed written statement denying and disputing the liability. It was pleaded that as offending motorcycle did not have valid registration, either temporary or permanent, the same amounted to violation of conditions of policy. Further, it was also pleaded that rider of offending motorcycle did not possess valid driving licence. The avocation, age and income of deceased were also denied.

6. Based on the aforesaid pleadings, the Tribunal has framed the following issues:

> "1) Whether the accident took place due to rash and negligent driving of 1st respondent driver of Hero Honda Splendor Motorcycle bearing Chassis No.MBLHA10ALDHG11616, Engine No.HA10EJDHG43309, bearing Registration No.AP 35 TR?
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> 2) Whether the 1st respondent driver was not having valid driving license as on the date of accident?
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> 3) Whether the petitioners are entitled for compensation, and if so, at what amount?
>
> 4) To what relief?"

7. Claimants examined PW.1 to PW.4 and marked Exs.A1 to A9. For insurer, RW.1 and RW.2 were examined, and Ex.B1 marked.

8. The Tribunal, after evaluating both oral and documentary evidence on record, and giving credence to the evidence of PW.4, eyewitness to the accident, corroborated by Ex.A1 FIR, Ex.A2 inquest report, Ex.A4 M.V.I. Report and Ex.A5 charge-sheet, held that the accident occurred due to rash and negligent driving of offending motorcycle by 1st respondent. The 2nd issue was answered in the negative, holding that the insurer failed to demonstrate that the rider of offending motorcycle did not possess valid and effective driving license. Coming to the aspect of compensation, the Tribunal, considering Ex.A7 salary certificate and evidence of PW.3, Senior Assistant working in the office of the Executive Engineer, A.P.E.W.I.D.C, Vizianagaram, determined the annual income of deceased,

after deducting statutory deductions, at Rs.4,04,235/- p.a. Future prospects were awarded at the rate of 30%. Considering the age of deceased as 48 years, applied multiplier of 13. 1/3rd of the same was deducted towards personal and living expenses. The Tribunal also awarded Rs.1,00,000/- towards loss of consortium to 1st claimant; Rs.25,000/- towards loss of love and affection to claimants 2 and 3; Rs.25,000/- towards loss of estate; Rs.25,000/- towards funeral expenses and Rs.5,000/- towards transportation expenditure, in total awarded Rs.47,34,381/-, payable along with interest at the rate of 9% p.a. Aggrieved by the same, present appeal is preferred.

9. Heard Mr.Rama Mohana Rao Kotha, learned counsel, representing Mr.Srinivasa Rao Katakamsetty, learned counsel for appellant/Insurer and Mr.G.Sai Narayana Rao, learned counsel for respondent-claimants.

10. Learned counsel for insurer mainly contended that the Tribunal, having found that the offending motorcycle neither had permanent nor temporary registration as required under the provisions of the M.V. Act, which is *sine qua non* for fastening the liability, ought to have exonerated it from payment of compensation. He further contended that the Tribunal has placed reliance on judgment of Kerala High Court in **Joby Thomas v. Annamma Augustine**[1], rather than following the binding precedent of

[1] 2012 ACJ 848

Hon'ble Apex Court in **Narinder Singh v. New India Assurance Co. Ltd**.[2], which emphatically laid down that non-registration of vehicle would amount to fundamental breach of terms and conditions of policy contract, therefore, insurer cannot be fastened with any liability. Alternatively, learned counsel for insurer also contended that, as in the present case, the claim is made by a third party, the Tribunal at least should have applied the principle of pay and recover. In this regard, reliance has been placed on the judgment of learned single Judge of Himachal Pradesh in **National Insurance Co. Ltd. v. Kamal Kishore[3].**

11. *Per contra*, learned counsel for claimants, while supporting the impugned award, contended that since issuance of policy was never in dispute, registration of vehicle would have no consequence for enforcement of liability under the said insurance contract, hence, the insurer cannot escape the liability. Therefore, it is urged to dismiss the appeal.

12. We have considered the submissions made above and perused the record.

13. Present appeal challenges only the liability of insurer, and there is no challenge to quantum of compensation. Even the claimants have not

[2] (2014) 9 SCC 324
[3] 2019 SCC OnLine HP 932

laid any challenge otherwise. The manner in which accident occurred is not in dispute. Two motorcycles, one ridden by deceased and the other by 1st respondent, have dashed in opposite directions. The deceased would, therefore, be a third party *qua* the insurer of offending motorcycle. The Tribunal has rendered a definitive finding that offending motorcycle was not registered as required under Section 39 of the M.V. Act. Further, the issuance of policy under Ex.B1 was also not disputed, rather, marked at the behest of the insurer itself. Therefore, the issue now boils down to whether the insurer would be liable for payment of compensation, even if the insured vehicle did not possess valid registration in terms of provisions of the M.V. Act.

14. In **Narinder Singh**[2], the Hon'ble Apex Court was considering a case where the offending vehicle was insured for the period from 12.12.2005 to 11.12.2006, however, the vehicle had temporary registration only for one month, which expired on 11.01.2006. It met with an accident on 02.02.2006 and suffered damages. The claim for damages was repudiated by insurer on the ground that owner himself was driving the vehicle at the time of accident, which did not have permanent registration after expiry of temporary registration. In that context, the Hon'ble Apex Court held as under:

> "**12.** Indisputably, a temporary registration was granted in respect of the vehicle in question, which had expired on 11-1-2006

> and the alleged accident took place on 2-2-2006 when the vehicle was without any registration. Nothing has been brought on record by the appellant to show that before or after 11-1-2006, when the period of temporary registration expired, the appellant, owner of the vehicle, either applied for permanent registration as contemplated under Section 39 of the Act or made any application for extension of period as temporary registration on the ground of some special reasons. In our view, therefore, using a vehicle on the public road without any registration is not only an offence punishable under Section 192 of the Motor Vehicles Act but also a fundamental breach of the terms and conditions of policy contract."

15. Aforesaid judgment, in our view, deals with a slightly different scenario. In the present case, the offending vehicle was never subjected to even temporary registration, leave alone permanent registration, nevertheless, insurer had issued policy. It is nobody's case that the policy did not cover the risk of third-party liability. The claim now arises on account of the third-party liability instituted at the instance of legal heirs of deceased, third-party. Non-registration of vehicle, even if it were to be treated as a fundamental breach of policy conditions, the said condition will have to be construed to be fundamental only against insured and not with respect to third party risk. The view so expressed by us is based on the spirit of law laid down by the Hon'ble Apex Court in **National Insurance Co. Ltd. v. Swaran Singh**[4] and later followed in **Shamanna v. Oriental**

[4] (2004) 3 SCC 297

Insurance Co. Ltd[5]. Recently, Hon'ble Apex Court in **K.Nagendra v. New India Insurance Co. Ltd**.[6], while reviewing the earlier precedents on the principle of pay and recover, held as under:

> **"7.1.** In *National Insurance Co. Ltd.* v. *Swaran Singh*[2], a bench of 3 learned Judges of this Court observed thus:
>
> > "**83.** Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does not mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to. Sub-section (7) of Section 149 of the Act, to which pointed attention of the Court has been drawn by the learned counsel for the petitioner, which is in negative language may now be noticed. The said provision must be read with sub-section (1) thereof. The right to avoid liability in terms of sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading."
> > [This judgment was followed in *Shamanna* v. *Oriental Insurance Co. Ltd.*[3]] (*emphasis supplied*)
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> **7.2.** K.T Thomas J., in *New India Assurance Co.* v. *Kamla*[4], stated the position of law succinctly, thus:
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> > "**25….** The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to

[5] (2018) 9 SCC 650
[6] 2025 SCC OnLine SC 2297

> pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention, it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default, the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person.

7.3. In *Parminder Singh* v. *New India Assurance Co. Ltd.*[5], this Court approved the application of this principle in cases where the driver of the offending vehicle does not possess a valid driving license.

7.4. In *S. Iyyapan* v. *United India Insurance Co. Ltd.*[6], it was held that if at the time of accident, there is a discrepancy in the vehicle being driven by the driver and the endorsement on the driver's license (*i.e., the kind of vehicle said driver is permitted to operate*) then, in such a case, pay and recover shall be permitted.

7.5. In *Chatha Service Station* v. *Lalmati Devi*[7] it was held that when a vehicle involved in an accident is found to be carrying certain goods which it was not authorized to as per law (*in the instant case hazardous goods within the meaning of Rule 9 of Central Motor Vehicles Rules, 1989*) the insurance company while would be required to compensate the victim of the accident, it shall be entitled to recover the amount so paid from the holder of the insurance policy.

8. Now, let us consider the instant case. The record reveals that the offending vehicle did not have the permit to enter

Channapatna City, where the accident took place. This position is not in dispute. Unquestionably, therefore, the terms of the permit have been deviated.

9. The purpose of an insurance policy in the present context is to shield the owner/operator from direct liability when such an unforeseen/unfortunate incident takes place. To deny the victim/dependents of the victim compensation simply because the accident took place outside the bounds of the permit and, therefore, is outside the purview of the insurance policy, would be offensive to the sense of justice, for the accident itself is for no fault of his. Then, the Insurance Company most certainly ought to pay.

10. At the same time though, when an Insurance Company takes on a policy and accepts payments of premium in pursuance thereto, it agrees to do so within certain bounds. The contract lays down the four corners within which such an insurance policy would operate. If that is the case, to expect the insurer to pay compensation to a third party, which is clearly outside the bounds of the said agreement would be unfair. Balancing the need for payment of compensation to the victim *vis-à-vis* the interests of the insurer, the order of the High Court applying the pay and recover principle, in our considered view, is entirely justified and requires no interference."

16. In view of the above observations, since issuance of policy is not in dispute, the claim arising being on account of third-party risk, we hold that the insurer is liable to discharge the liability of payment of entire compensation amount to the third party-claimants in the first instance, and thereafter, entitled to claim the same from the owner of the offending

motorcycle by filing execution application without resorting to any other proceedings in this respect.

17. Accordingly, the appeal is disposed of. No order as to costs.

As a sequel, miscellaneous petitions pending consideration, if any, shall stand closed.

LISA GILL, CJ **CHALLA GUNARANJAN, J.**

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