THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
MACMA No.88 OF 2013

JUDGMENT:

1 This appeal, under Section 173 of Motor Vehicles Act, 1988, is preferred by the insurer assailing the judgment and award dated 30.03.2012 passed in MVOP No.6 of 2010 on the file of Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Kadapa District at Rayachoty, whereunder and whereby an amount of Rs.1,13,000/- was awarded to the petitioner towards compensation as against the claim of Rs.3,00,000/-.

2 For the sake of convenience, the parties to this appeal are hereinafter referred to as they are arrayed in the O.P.

3 The facts leading to the filing of the present appeal are briefly as follows:

4 On 08.11.2009 at about 10.30 a.m. the petitioner boarded the auto bearing No.AP-04-V-6771 at Appalarajupalli cross roads to go to Lakkireddypalle on his personal work. When the auto reached near Morlavandla palle cross road, the driver of the auto bearing No.AP-04-W-9280 came in opposite direction and dashed the auto in which the petitioner was travelling. The accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP-04-W-9280 against whom the Station House Officer, Lakkireddipalle police station registered a case in Cr.No.119 of 2009 for the offences punishable under Sections 337 and 338 of IPC. Due to the accident, the petitioner sustained fractures on various parts of the body and took treatment in Ramadevi hospital, Tirupati and underwent operation. The petitioner spent huge amount towards medicines and treatment. By the time of accident, the petitioner was aged about 32 years and used to earn Rs.6,000/- p.m. by attending agricultural work. Due to fracture, the petitioner could not attend the work and

thereby he lost his income. The auto bearing No.AP-04-W-9280, which belongs to the first respondent was insured with the second respondent with effect from 08.06.2009 to 07.06.2010. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. Hence the petition.

5 The first respondent remained ex parte. The second respondent – insurer filed counter denying the material averments made in the petition including the manner of accident and injuries sustained by the petitioner, inter *alia* contending that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP-04-V-6671. Therefore, the present petition is not maintainable for non-impleading of driver, owner and insurer of the said auto. The petitioner is not entitled to compensation unless it is established that the driver of the auto was having valid and effective driving licence as on the date of accident. The compensation claimed by the petitioner is highly excessive and exorbitant. Hence the petition may be dismissed.

6 Basing on the above pleadings, the Tribunal framed the following issues for trial:

i. Whether the pleaded accident was occurred due to the negligence of the driver of the auto bearing No.AP-04-W-9280 of first respondent or due to the negligence of the driver of the auto No.AP-04-V-6771?

ii. Whether the owner and insurer of the auto No.AP-04-V-6771 are necessary parties to the petition?

iii. Whether the petitioner is entitled for compensation, if so, at what rate and against which of the respondents?

iv. To what relief?

7 Before the Tribunal, on behalf of the petitioner P.Ws.1 and 2

were examined and Exs.A.1 to A.10 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Exs.B.1 to B.3 were marked.

8 The Tribunal, on appreciating the oral, documentary evidence and other material available on record, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP-04-W-9280, which resulted injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.1,13,000/- with interest at 6% p.a. from the date of filing of the petition till the date of realization. As stated supra, feeling aggrieved by the judgment and award of the Tribunal, the insurer-2nd respondent has preferred this appeal.

9 The learned counsel for the 2nd respondent submitted that the Tribunal failed to consider the oral testimony of R.Ws.1 and 2 and the recitals of Exs.B.1 and B.2in right perspective and allowed the petition on assumptions and presumptions. She further submitted that the driver of the auto bearing No.AP-04-W-9280 was not having valid and effective driving licence to drive LMV Transport. She further submitted that the first respondent intentionally violated the terms and conditions of the insurance policy and hence there is no obligation on the part of the 2nd respondent to indemnify the liability of the first respondent.

10 *per* contra, the learned counsel for the petitioner submitted that R.Ws.1 and 2 have categorically admitted that the driver of the auto bearing No.AP-04-W.9280 was having valid and effective driving licence to drive the auto at the relevant point of time. He further submitted that the Tribunal has awarded just and reasonable compensation to the petitioner and there are no grounds much less valid grounds to upset the findings of the Tribunal.

11 Basing on the rival contentions of both parties, the point that arises for consideration in this appeal is:

> "Whether the first respondent had violated the terms and conditions of the insurance policy so as to absolve the liability of the 2nd respondent?"

Point:

12 As per the findings recorded by the Tribunal, the accident occurred due to rash and negligent driving of the driver of the auto bearing No.AP-04-W-9280, which resulted injuries to the petitioner. The oral testimony of P.W.1 coupled with Exs.A.1 and A.2 reveals that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP-04-W-9280. The Tribunal has assigned cogent and valid reasons to its findings. There are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal on issue No.1. The second respondent has not taken any ground in the grounds of appeal challenging the finding of the Tribunal on issue No.1.

13 The learned counsel for the second respondent is not disputing the quantum of compensation awarded by the Tribunal. The oral testimony of P.Ws.1 and 2 coupled with Exs.A.2 to A.6 clearly reveals that the petitioner sustained fracture to left tibia and fibula. The petitioner also sustained three grievous injuries and took treatment for a long time. The oral testimony of P.W.2 coupled with Ex.A.8 disability certificate clearly reveals that the petitioner sustained 45% disability. It is needless to say that the functional disability cannot be equated with loss of earning capacity in each and every case. Due to fracture and injuries, the petitioner might not have attended to his work for a period of two months. Therefore, the Tribunal awarded an amount of Rs.6,000/- towards loss of earnings. Admittedly, the petitioner took treatment in two or three hospitals. Therefore, the Tribunal awarded an amount of Rs.2,000/- towards

transportation charges which is just and reasonable. It is a known fact that the injured person has to spend huge amount towards medicines and treatment. As per Ex.A.7 medical bills, the petitioner spent Rs.8,205/-. Taking into consideration the nature of injuries sustained by the petitioner, the Tribunal awarded an amount of Rs.10,000/- towards medicines and treatment. A perusal of the record clearly reveals that there is deformity to the left leg of the petitioner. Due to one fracture and three grievous injuries, the petitioner might have suffered a lot. Taking into consideration the mental agony undergone by the petitioner, the Tribunal has rightly awarded an amount of Rs.45,000/- towards pain and suffering. The Tribunal also awarded an amount of Rs.25,000/- towards deformity. The 45% functional disability sustained by the petitioner would undoubtedly effect the future earning capacity of the petitioner. The Tribunal taking into consideration all these aspects, has awarded an amount of Rs.25,000/- towards loss of future earning capacity. The amount of compensation awarded under various heads is just and reasonable. There are no grounds much less valid grounds to interfere with the quantum of compensation awarded by the Tribunal.

14 The predominant contention of the learned counsel for the second respondent is that the driver of the crime vehicle was not having valid and effective driving licence as on the date of accident to drive the auto. To substantiate the same, R.Ws.1 and 2 were examined and Exs.B.1 and B.2 were marked. The oral testimony of R.Ws.1 and 2 coupled with Exs.B.1 and B.2 clearly reveals that the driver of the crime vehicle was having driving licence to drive LMV non-transport. Admittedly, the auto involved in the accident is a passengers auto. The fact remains that the driver of the auto was not having driving licence to drive the transport vehicle. In the cross examination R.Ws.1 and 2 in unequivocal terms deposed that the

driver of the auto bearing No.AP-04-W-9280 is entitled to drive passengers auto. If the testimony of R.W.2 is taken into consideration, the owner of the crime vehicle has not violated the terms and conditions of the policy. It is a common knowledge that the driving skill required for driving of transport and non-transport vehicle is one and the same. The currency of the licence period may be different. The only difference between the transport and non-transport vehicle is obtaining of badge. It is not the case of the second respondent that the proximate cause of the accident is non-holding of badge by the driver of the auto bearing No.AP-04-W.9280. The crucial question that falls for consideration at this juncture is whether mere non-obtaining of necessary endorsement/badge by the driver by itself would amount to fundamental breach of the terms and conditions of the policy or whether it is a technical or minor lach? In order to resolve the issue this court is placing reliance on the following decisions.

S.Iyyapan Vs. United India Insurance Co.[1] wherein the Hon'ble apex Court held as follows:

> **17.** Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter *alia* on the grounds, namely,
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> (*i*) the vehicle was not driven by a named person,
> (*ii*) it was being driven by a person who was not having a duly granted licence, and
> (*iii*) person driving the vehicle was disqualified to hold and obtain a driving licence.
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> Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded

from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment[5] is, therefore, liable to be set aside.

19. We, therefore, allow this appeal, set aside the impugned judgment of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. However, there shall be no order as to costs.

Kulwant Singh and others Vs. Oriental Insurance Co. Ltd [2] wherein the Hon'ble apex Court held as follows:

> **10**. In S. Iyyapan (supra), the question was whether the driver who had a licence to drive 'light motor vehicle' could drive 'light motor vehicle' used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed:
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> > "**19**. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside."
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> No contrary view has been brought to our notice.
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> **11**. Accordingly, we are of the view that there was no breach of any condition of insurance policy, in the present case, entitling the Insurance Company to recovery rights.

15 As per the principle laid down in the above cases, non-holding of badge by itself would not amount to fundamental breach of terms and conditions of the policy so as to absolve the liability of the second respondent. The facts of the cases cited supra are almost identical to the facts of the case on hand.

16 Having regard to the facts and circumstances of the case and also the principle enunciated in the recent judgments of the apex Court, I am unable to accede to the contention of the learned counsel for the second respondent that the first respondent has violated the terms and conditions of the insurance policy so as to absolve its liability. I see no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal. The appeal lacks merits and bonafides and hence the same is liable to be dismissed.

17 In the result, the appeal is dismissed, confirming the judgment and award dated 30.03.2012 passed in MVOP No.6 of 2010 on the file of Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Kadapa District at Rayachoty. As a sequel, the miscellaneous petitions, pending in this miscellaneous appeal, if any, shall stand closed.

T. SUNIL CHOWDARY, J

Date: 9th September, 2015

Kvsn

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[1] (2013) 7 SCC 62

[2] 2014 ACJ 2873