**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

**M.A.C.M.A.No.905 of 2009**

**&**

**CROSS OBJECTIONS SR.No.15255 of 2010**

**COMMON JUDGMENT:**

1 Aggrieved by the judgment and award dated 06.06.2008 passed in M.V.O.P.No.1512 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District & Sessions Judge, Visakhapatnam wherein and whereby an amount of Rs.2,70,500/- was awarded as compensation to the claimant, the insurance company filed MACMA No.905 of 2009 and dissatisfied with awarding of the said amount of compensation, the claimant filed Cross Objections Sr.No.15255 of 2010 seeking higher compensation.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

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

4 On 10.06.2006 the petitioner along with her family members was proceeding to Pudimadaka village from Anakapalle in an auto bearing No.AP 31 U 9091. When the auto reached near rice mill at Nagulapalli village, a Trolley auto (goods auto) bearing No.AP 31 Y 328 (hereinafter referred to as 'the crime vehicle') came in opposite direction in a rash and negligent manner driven by its driver and hit the auto in which the petitioner was travelling. The accident occurred due to the rash and negligent driving of the driver of the crime vehicle against whom the Station House Officer, Munagapaka Police Station registered a case in Cr.No.19 of 2006 for the offences punishable under Sections 337 and 338 of IPC. In the said accident, the petitioner sustained grievous injuries to her right leg. The petitioner took treatment as inpatient in Government hospital, Visakhapatnam

and Bharadwaj hospital, Visakhapatnam from 10.04.2006 to 23.06.2006. The right leg of the petitioner was amputated above the knee. By the date of accident, the petitioner was aged about 27 years and was earning Rs.6,000/- per month while working as marketing agent. Due to amputation, the petitioner could not attend her work for a long time and thereby lost her income. The petitioner spent huge amount towards medicines and treatment. The petitioner sustained disability also due to the injuries sustained by her in the accident. Therefore, the petitioner filed the petition claiming compensation of Rs.9,00,000/- from the respondents. By the date of accident, the crime vehicle was insured with the second respondent and hence the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

5 First respondent filed counter denying the material averments inter *alia* contending that the accident occurred due to the overload of the auto in which the petitioner was travelling at the time of accident and there was no rashness or negligence on his part and hence the petition may be dismissed.

6 The second respondent filed counter denying the material averments inter *alia* contending that there was no rashness or negligence on the part of the driver of the crime vehicle i.e. first respondent. It is further contended that the accident occurred due to the rash and negligent driving of the driver of the auto in which the petitioner was travelling. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. Hence the petition may be dismissed.

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

i. Whether the accident occurred on account of the rash and negligent driving of the vehicle bearing No.AP

31 Y 328 by its driver and whether it resulted in injuries to the victim?

ii. Whether the petitioner is entitled for compensation? If so, to what amount?

iii. Which of the respondents are liable to pay compensation?

iv. To what relief?

8 During the course of trial, on behalf of the petitioner P.Ws.1 to 4 were examined and Exs.A.1 to A.10 and Exs.X.1 to X.4 were marked. On behalf of the second respondent R.Ws.1 & 2 were examined and Ex.B.1 and Ex.X.5 were marked.

9 On appreciation of the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 31 Y 328 i.e. first respondent and allowed the petition in part by awarding compensation of Rs.2,70,500/- with interest at 7.5% p.a from the date of filing of the petition till the date of realisation and directed the respondent Nos.1 and 2 to deposit the amount of compensation jointly and severally.

10 Sri U. Pratap Rao the learned counsel for the petitioner/cross objector submitted that the Tribunal has not properly assessed the income of the petitioner. He further submitted that the Tribunal has wrongly discarded Ex.A.7 on erroneous grounds. He further submitted that the Tribunal has not taken into consideration the future treatment of the petitioner.

11 Sri Kota Subba Rao, the learned counsel for the appellant / second respondent submitted that the Tribunal committed error in fastening liability on the second respondent. He further submitted that the Tribunal has awarded just and reasonable compensation to the petitioner.

12 Heard Sri Jayanthi S.C.Sekhar, the learned counsel for the first respondent.

13 Now the points that arise for consideration in this appeal are:

> 1. Whether the Tribunal has awarded just and reasonable compensation or not?
>
> 2. Whether the first respondent had violated the terms and conditions of the policy so as to absolve the liability of the second respondent – insurance company"

***Point No.1***:

14 As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the crime vehicle by the first respondent. The Tribunal has assigned cogent and valid reasons to its findings. I am fully agreeing with the finding of the Tribunal on issue No.1 with regard to the manner of accident. Hence, having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the crime vehicle by the first respondent, which resulted injuries to the petitioner.

15 The oral testimony of P.W.1, coupled with Exs.A.2 and A.8 clearly reveals that the petitioner's right leg was amputated above knee. As per the testimony of P.Ws.2 to 4, the petitioner's right leg was amputated above knee. As per Ex.A.8 disability certificate, the petitioner sustained 80% disability. Basing on the material available on record, I am of the considered view that the petitioner sustained 80% functional disability.

16 As per the testimony of P.W.1, by the date of accident, she was earning Rs.6,000/- p.m. as marketing agent. To substantiate the income, the petitioner mainly placed reliance on Ex.A7 certificate. For the reasons best known to the petitioner, she did not choose to examine the person who issued Ex.A.7 certificate. The Tribunal,

after considering the material available on record, has rightly discarded Ex.A.7. Absolutely, there is no material on record to establish the income of the petitioner as on the date of accident. However, even in the absence of any documentary evidence, some guess work is inevitable to determine the income of the petitioner. By the date of accident, the petitioner was a married woman and aged about 27 years. Due to the amputation of her right leg above knee, the petitioner may not be in a position to help her family members. The services rendered by a house wife cannot be counted in terms of money. Having regard to the facts and circumstances of the case, I am of the considered view that the contribution of the petitioner to her family members would be Rs.3,000/- p.m. In the petition, the age of the petitioner was shown as 27 years. It appears after being admitted in the hospital, she might have informed to the doctors that she was aged about 24 years knowing fully well that she will approach the Tribunal to claim compensation. Therefore, this Court is of the considered view that the petitioner was aged about 27 years by the date of accident. The Tribunal committed error while arriving at a conclusion that the petitioner was aged about 24 years by the date of accident. As per the ratio laid down in ***Sarla Verma Vs. Delhi Transport Corporation***[1]***,*** for the age group of 26 to 30, the appropriate multiplier is 17. It is needless to say that the percentage of functional disability cannot be equated with the loss of earning capacity in each and every case. The loss of earning capacity depends upon numerous factors like avocation of the injured etc. The Tribunal without considering all these aspects, proceeded on the premise that percentage of functional disability is equivalent to loss of earning capacity. Having regard to the facts and circumstances of the case, I am of the considered view that the loss of earning capacity of the petitioner is 50%. Therefore, the loss of earnings per month would come to Rs.1,500/-. The loss of earnings comes to Rs.1,500/- X 12 X 17 = Rs.3,06,000/-.

17 Due to amputation of her right leg, the petitioner might have suffered a lot. The Tribunal awarded an amount of Rs.10,000/- towards pain and suffering. Taking into consideration the nature of injuries sustained by the petitioner, I am of the considered view that awarding of Rs.10,000/- towards pain and suffering is unjust and unreasonable. Hence, I am inclined to award an amount of Rs.40,000/- towards pain and suffering. By taking into consideration Exs.A.5 and A.6 medical bills, the Tribunal has rightly awarded an amount of Rs.53,520/- towards medicines and treatment. In future also, the petitioner has to spend some amount for replacement of artificial limb. Hence, I am inclined to award an amount of Rs.1.00 lakh towards replacement of artificial limb in future. The petitioner might not have attended to her work at least for a period of five months including the period of treatment. Hence, an amount of Rs.15,000/- (Rs.3,000 X 5) is awarded towards loss of earnings during the period of treatment.

18 Thus, the total compensation, which the petitioner is entitled to, would come as under:

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| Loss of future earnings: | Rs.3,06,000/- |
| Replacement of artificial limb: | Rs.1,00,000/- |
| Pain and suffering: | Rs. 40,000/- |
| Medicines: | Rs. 53,520/- |
| Loss of earnings during the Period of treatment: | Rs. 15,000/- |
| | =========== |
| TOTAL | Rs.5,14,520/- |
| | =========== |

19 The amount of compensation awarded under various heads is just and reasonable. The point is answered accordingly.

***Point No.2***:

20 The contention of the learned counsel for the second respondent is that the driver of the crime vehicle i.e. first respondent was not having valid and effective driving licence to drive the crime vehicle as on the date of accident. The oral testimony of R.Ws.1 and 2 coupled with Ex.X.5 reveals that the first respondent was having driving licence to drive the Light Motor Vehicle Non Transport. The vehicle involved in the accident is a goods vehicle. The driving skill required for driving of LMV Transport and LMV Non Transport is one and the same. The licencing authority will issue badge while issuing licence to drive the transport vehicle. But the badge has nothing to do with the driving skill of the driver. It is not the case of the second respondent that the proximate cause of the accident was due to non-possessing of the badge by the first respondent. Mere non-possessing of badge would not amount to fundamental breach of the terms and conditions of the policy. To resolve the issue, this Court is placing reliance on the following judgments:

*a.* ***S.Iyyapan Vs. United India Insurance Co.***[2] 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,
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> (*ii*) it was being driven by a person who was not having a duly granted licence, and
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> (*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 is, therefore, liable to be set aside.

19. We, therefore, allow this appeal, set aside the impugned judgment[5] 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.

*b.* ***Kulwant Singh and others Vs. Oriental Insurance Co. Ltd***[3]

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:

"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."

No contrary view has been brought to our notice.

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.

21 The facts of the case on hand are almost identical to the facts of the cases cited supra. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, this Court is of the view that the first respondent

has not violated the terms and conditions of the policy so as to absolve the liability of the insurance company or to enable the insurer to recover the amount of compensation from the insured, after satisfying the award passed by the Tribunal. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioner. The appeal is devoid of any merit and lacks bonafides.

23 In the result, the MACMA No.905 of 2009 is dismissed. Cross Objection SR.No.15255 of 2010 is partly allowed enhancing the compensation from Rs.2,70,500/- to Rs.5,14,520/- with interest at 7.5% p.a. throughout. The respondent Nos.1 and 2 are hereby directed to the deposit the amount of compensation together with interest as stated above, jointly and severally. Parties are directed to bear their own costs in this appeal. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

**T. SUNIL CHOWDARY, J.**

Date: 10.03.2015

***Kvsn***

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[1] 2009 ACJ 1298 (SC)

[2] (2013) 7 SCC 62

[3] 2014 ACJ 2873