THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.2055 of 2009

JUDGMENT:

Aggrieved by the Award dated 31.08.2007 in O.P.No.506 of 2005 passed by the Chairman, MACT-cum-I Additional Metropolitan Sessions Judge-cum-XV Additional Chief Judge, Hyderabad (for short "the Tribunal"), the 2nd respondent in the O.P/ United India Insurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a. The case of the claimant is that on 23.01.2005 at about 12.30 PM, when the deceased—Ravinder Pandey and another person were going on a bicycle from Katedan towards Mylardevpally and when they reached near Durga Nagar Cross roads, the driver of DCM van bearing No.AP 16U 7375 drove the same in a rash and negligent manner and at high speed and hit the cyclist from behind. Thereby, both the persons fell down on the road and the deceased received grievous injuries. Immediately he was shifted to Gandhi Hospital, Secunderabad and while undergoing treatment he succumbed to injuries. It is averred that the accident was occurred due to the fault of driver of the offending van. On these pleas, the claimant filed O.P.No.506 of 2005 under Section 166 of Motor Vehicles Act, 1988 (for short "M.V.Act") and claimed Rs.5,00,000/- as compensation against respondents 1 and 2 who are owner and insurer of the offending van.

b. Respondent No.1 remained ex-parte.

c. Respondent No.2/Insurance Company filed counter denying all the material averments made in the petition and contended that driver who drove the vehicle at the time of accident did not possess any valid and effective driving licence to drive the heavy goods vehicle, which is clear violation of terms and conditions of the policy and therefore, R2 is not liable for the claim. R2 further contended that compensation claimed is highly excessive and exorbitant and thus prayed to dismiss the O.P.

d. During trial, PWs.1 to 3 were examined and Exs.A1 to A6 were marked and Ex.X1 was exhibited on behalf of claimant. RWs.1 and 2 were examined and Exs.B1 to B5 were marked on behalf of respondents.

e. The Tribunal considering the oral and documentary evidence held that driver of the offending van was responsible for the accident and awarded Rs.2,00,000/- with proportionate costs and interest at 6% p.a. under different heads as follows:

Loss of earnings Rs. 1,70,000-00

Loss of consortium Rs. 15,000-00

Loss of estate and non-pecuniary damages Rs. 15,000-00

Total: Rs. 2,00,000-00

Hence, the appeal by Insurance Company.

3) The parties in this appeal are referred as they were arrayed before the lower Tribunal.

4) Heard arguments of Sri V.Venkata Rami Reddy, learned counsel for appellant/Insurance Company and Sri V.Atchuta Ram, learned counsel for R1/ claimant. Notice sent to R2 was unserved.

5) The main ground on which learned counsel for appellant/

Insurance Company challenged the award is that the driver of the DCM van had licence to drive only Light Motor Vehicle (Non-Transport) but he drove the Heavy Motor Vehicle (HMV) and thereby the insured breached the terms of policy and hence, the Tribunal ought to have exonerated the Insurance Company from the liability. However, though the Tribunal accepted the plea that the driver had no valid driving licence, still mulcted the Insurance Company with liability on the observation that the Insurance Company failed to establish that the owner of the vehicle had deliberately committed breach of the terms of the policy and that lack of valid driving licence was the fundamental cause for the accident. Learned counsel would argue that it is the responsibility of the owner to see that the driver had valid driving licence and he has to establish that he allowed the person who possessed valid driving licence to drive the vehicle but in the instant case, the owner/insured remained *exparte* and therefore, the Tribunal ought to have held that the owner failed to discharge his burden and thereby exempted the Insurance Company from liability. Alternatively he argued that if the above argument is not accepted, Insurance Company may be ordered to pay and recover the compensation.

6) Per contra, learned counsel for R1/claimant argued that the Tribunal has not emphatically held whether driver had or not had the driving licence but only held that the Insurance Company failed to establish that the owner committed the breach of the policy and that lack of driving licence was the fundamental cause for the accident. Learned counsel argued that driving licence is concerned, the driver had licence to drive LMV (Non-Transport) and as per Ex.B.4—R.C extract. The vehicle in question was also a Light Motor Vehicle and therefore, it is not apt to contend that the driver had no valid driving licence. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination is:

"Whether the Tribunal was right in fastening the liability on the Insurance Company?"

8) **<u>POINT</u>**: The main contention on which the Insurance Company claims exemption from the liability is the driver had no valid and effective driving licence inasmuch as he possessed only LMV (non-transport) driving licence but the vehicle is a HMV and the owner thus committed breach of the terms of the policy. However, the contention of R1/claimant is that driver had valid driving licence.

a) In this context, relevant evidence has to be perused. Before that the finding of the Tribunal on this aspect need to be perused. In paras —12 to 18 of its judgment the Tribunal dealt with this aspect. It must be said that the Tribunal has not given emphatic finding as to whether or not the driver had valid and effective driving licence. However in para-7 it made an observation that respondent No.2 has not produced satisfactory evidence to show that owner of the vehicle committed breach of the terms of the policy and that accident was caused solely because the driver not possessed valid licence. From this observation it can be inferred the Tribunal opined that the driver had no valid and effective driving licence. Hence, it has to be seen with reference to the evidence on record whether the said finding is correct or not.

b) Ex.B2—driving licence extract would show that the driver possessed LMV (non-transport) driving licence for the period covered 29.12.2004 and 28.12.2024. Then, Ex.B4—RC extract of the crime vehicle bearing No.AP 16U 7375 would show that in column No.2 under the heading *vehicle class* it is mentioned "*goods carriage—HMV*". By this classification it is contended on behalf of Insurance Company that vehicle involved in the accident is a HMV and the driver had no valid driving licence to drive the type of vehicle involved in the accident. However, the contention on behalf of claimant is otherwise. In column No.20 the unladen weight is mentioned as 2150 Kgs. and in column No.22 the gross vehicle weight is mentioned as 6950 kgs. Basing on the aforesaid mentioning it is contended by the claimant with reference to definition of LMV given in Section 2(21) of MV Act that the vehicle is a LMV and so, the driver had valid driving licence to drive the same.

c) Section 2(21) defines a LMV means "*a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7,500 kilograms*". Considering this definition it can be said that the crime vehicle is a LMV because neither the gross vehicle weight nor unladen weight exceeds 7,500 kgs. However, the vehicle in question is a goods carriage vehicle i.e. transport vehicle whereas the driver was authorised to drive LMV of non-transport type. In that context, it can be said that he had no valid and effective driving licence to drive the type of vehicle involved in the accident. Be that it may, since there is no evidence to the effect that owner deliberately allowed the unauthorised driver to drive the vehicle and that the said breach is the fundamental cause for the accident and further that the claim is that of a third party, the Insurance Company can be directed to pay compensation and recover the same from the insured.

9) In the result, this MACMA filed by the Insurance Company is partly allowed and ordered as follows:

> a) While upholding the quantum of compensation awarded by the Tribunal, R2/Insurance Company in the OP is directed to pay compensation at first and later recover the same from the owner/insured treating this judgment as decree for such recovery.
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> b) No costs in the appeal.

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

U.DURGA PRASAD RAO, J

Dt: 05.11.2015

Scs/Murthy