THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1253 of 2009

JUDGMENT:

1 This appeal, under Section 173 of the Motor Vehicles Act, is filed by the second respondent, challenging the Judgment and award dated 30.12.2008 passed in M.V.O.P.No.13 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge at Chittoor District at Tirupati wherein and whereby an amount of Rs.1,01,596/- was awarded as compensation as against the claim of Rs.2.00 lakhs.

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 11.08.2005 at 9.45 a.m, while the petitioner was proceeding to Chambetivari Mantapam of Srikalahasthi town in an auto, the driver of the TATA Mobile Truck bearing No.AP 03 8447 had driven the same in a rash and negligent manner at high speed and dashed against the auto in which the petitioner was travelling. The accident occurred due to the rash and negligent driving of the driver of the truck against whom the Station House Officer, Srikalahasthi (Urban) registered a case in Cr.No.144 of 2005 for the offences punishable under Sections 337 and 279 IPC. Due to the accident, the petitioner sustained fractures and injuries and took treatment as inpatient in SVRR Government General hospital, Tirupati and thereafter in Prashanthi hospital, Tirupati. Due to injuries and fractures, the petitioner sustained permanent disability and thereby lost his income. By the date of accident, the petitioner was aged about 25 years and used to earn Rs.5,000/- p.m on contract works and agriculture. The TATA Mobile Truck bearing No.AP 03 8447, which belongs to the first respondent was insured with the second respondent as on the date of accident. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.2.00 lakhs to the petitioners.

5 First respondent remained ex parte. Second respondent filed counter denying the various allegations made in the petition, inter alia contending that the accident occurred due to the rash and negligent driving of the driver of the auto

and that there was no negligence on the part of the driver of the TATA Mobile Truck bearing No.AP 03 8447. The amount of compensation claimed by the petitioner under various heads is excessive and exorbitant. The petitioner is not entitled to claim compensation against this respondent unless the petitioner establish that the driver of the TATA Mobile Truck bearing No.AP 03 8447 was having valid and effective driving licence as on the date of accident. Hence the petition may be dismissed.

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

i. Whether the petitioner sustained injuries as a result of use of motor vehicle bearing Regn. No. AP 03 V 8447 on 11.8.2005 at 9.45 AM near Chembetivari Mandapam Opp. To Prakasam Rice Mill, Srikalahasthi on Tirupati – Naidupeta main road?

ii. Whether the petitioner is entitled to any compensation? If so, to what amount and from whom?

iii. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 to 3 were examined and Exs.A.1 to A.7 were marked. On behalf of the 2nd respondent R.Ws.1 and 2 were examined and Exs.B.1 to B.3 were marked.

8 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 TATA Mobile Truck bearing No.AP 03 8447 which resulted injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.1,01,596/- with interest at 7.5% p.a from the date of filing of the petition till the date of deposit and directed the respondent Nos.1 and 2 to deposit the same jointly and severally. Feeling aggrieved by the said judgment and award of the Tribunal, the second respondent preferred the present appeal.

9 Having received notices, the respondent Nos.1 and 2 did not choose to appear before this Court. Hence I am inclined to proceed with the matter on merits.

10 The contention of the Sri G.S. Prakasa Rao, the learned counsel for the second respondent is three fold:

i. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of TATA Mobile Truck bearing No.AP 03 8447 is not sustainable.

ii. The amount of compensation awarded by the Tribunal is highly excessive and exorbitant.

iii. The first respondent had violated the terms and conditions of the insurance company and hence the second respondent is not liable to indemnify the liability of the first respondent.

11 Now the points that fall for consideration in this appeal are:

> 1. Whether there was any contributory negligence on the part of the driver of the auto to cause the accident? If so, to what extent?
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> 2. Whether the amount of compensation awarded by the Tribunal is just and reasonable or not?
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> 3. Whether the first respondent has violated the terms and conditions of the policy so as to absolve the liability of the second respondent?

Point No.1:

12 In order to prove the rashness and negligence on the part of the driver of the crime vehicle, the petitioner examined himself as P.W.1 and got marked Exs.A.1 and A.2. To demolish the case of the petitioner, the second respondent examined R.Ws.1 and 2. As seen from the testimony of P.W.1, on the date of accident, he was travelling in an auto. When the auto reached near Chembetivari Mandapam Opp. To Prakasam Rice Mill, Srikalahasthi on Tirupati – Naidupeta main road, the driver of the crime vehicle had drive the same in a rash and negligent manner and hit the auto ion which he was travelling. In the cross-examination of P.W.1, nothing is elicited to shake his testimony so far as the manner of accident is concerned. R.W.1 is an employee in the office of the second respondent – insurance company. It is an admitted fact that R.W.1 is not an eyewitness to the accident. There is no whisper in the chief examination of R.W.1 that the accident occurred due to the rash and negligent driving of the driver of the auto. If really there was contributory negligence on the part of the driver of the auto, what prevented the second respondent to examine the driver of the crime vehicle or any other eyewitness to the accident? Mere taking a plea in the counter by itself would not amount to proof of the stand taken by the

second respondent that there was contributory negligence on the part of the driver of the auto also to cause the accident. The oral testimony of R.W.1 is not supported by any documentary evidence. As per the recitals of Ex.A.1-F.I.R and Ex.A.2-charge sheet, the accident occurred due to the rash and negligent driving of the driver of the TATA Mobile Truck bearing No.AP 03 8447, which resulted injuries to the petitioner. If really the accident occurred due to the contributory negligence on the part of the driver of the auto, the police might have filed charge sheet against him also. This aspect also lends support to the version of the petitioner. 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 on the part of the driver of TATA Mobile Truck bearing No.AP 03 8447, which resulted injuries to the petitioner. The Tribunal has assigned cogent and valid reasons to its findings on issue No.1. I am fully agreeing with the findings recorded by the Tribunal on Issue No.1. Therefore, the contention of the learned counsel for the second respondent that the driver of the auto was also equally responsible to cause the accident is not sustainable. Hence this point is answered in favour of the petitioner and against the second respondent.

Point No.2:

13 As per the testimony of P.Ws.1 and 2 and recitals of Ex.A.4 - Wound Certificate and Ex.A.6 – disability certificate and Ex.A.7 – discharge summary, the petitioner sustained the following injuries:

i. Laceration at the back of right elbow (3 x 2 cm)

ii. Laceration of left elbow (2 x 1 cm)

iii. Laceration of left eyebrow (2 x 1 cm)

iv. Laceration of left cheek (1 x ½ cm)

v. Laceration of 7 x 4 cm lateral aspect of right thigh

vi. Comminute fracture of upper third of right femur.

vii. Fracture of pelvis in the form of fracture superior and inferior pubic rami on right side.

14 A perusal of the record reveals that the petitioner sustained two fractures and underwent operation. Taking into consideration the nature of the injuries

sustained by the petitioner, the Tribunal rightly awarded an amount of Rs. 15,000/- towards pain and suffering. The oral testimony of P.Ws.2 and 3 clearly reveals that the petitioner took treatment as inpatient in SVRR Government hospital and thereafter in Prashanti Private Hospital at Tirupati. As per Ex.A.5 medical bills, the petitioner spent nearly rs.20,000/-. Taking into consideration the period of treatment taken by the petitioner, the Tribunal had rightly awarded an amount of Rs.20,000/- towards medicines, extra nourishment and attendant charges. The Tribunal also awarded an amount of Rs.500/- towards transportation charges. The oral testimony of P.Ws.1 to 3 coupled with Ex.A.7 – disability certificate reveals that the petitioner incurred 18% permanent disability. Basing on the material available on record, the Tribunal arrived at a conclusion that the petitioner may earn Rs.60/- per day, which comes to Rs.1,800/- p.m. Even by attending cooli work, the petitioner may earn more than Rs.1,800/- p.m. Therefore, I am unable to accede to the contention of the learned counsel for the second respondent that the monthly income of the petitioner, as assessed by the Tribunal, is on higher side. The Tribunal assessed the loss of earnings to the tune of Rs.66,096/- (1,800/-x 18/100 x 12 x 17). The Tribunal rightly assessed the loss of future earnings of the petitioner. In total the Tribunal awarded Rs.1,01,596/- as compensation to the petitioner. Viewed from any angle, the amount of compensation awarded by the Tribunal is not on higher side. The petitioner has not filed any appeal or cross objections challenging the quantum of compensation awarded by the Tribunal.

Point No.3:

15 As per the contention of the learned counsel for the second respondent, the driver of the crime vehicle was not having valid and effective driving licence as on the date of accident. The oral testimony of R.W.2 coupled with Ex.B.1 reveals that the crime vehicle is an LMV. The oral testimony of R.W.1 and R.W.2 coupled with Ex.B.1 reveals that the driver of the crime vehicle had obtained driving licence on 01.12.2004 to drive an LMV Non-transport. The driving licence of the driver of the crime vehicle will be valid up to 30.11.2014. The material available on record clearly reveals that the driver of the crime vehicle was having valid and effective driving licence to drive LMV Non-transport as on the date of accident. The driving skill required for driving an

LMV Transport and Non-transport is one and the same. Mere non-obtaining of badge by itself would not amount to fundamental breach of terms and conditions of Ex.B.1 policy. This Court is placing reliance on ***S.Iyyapan Vs. United India Insurance Co.*** 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. [image] 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.
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> 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.
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> 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.

Kulwant Singh and others Vs. Oriental Insurance Co. Ltd 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."

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.

16 The facts of the case cited supra 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 owner of the vehicle has not violated the terms and conditions of the policy so as to absolve the liability of the second respondent.

17 In the light of the foregoing discussion, I am unable to accept the contention of the learned counsel for the second respondent that the first respondent had violated the terms and conditions of the insurance policy. I see no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal. The appeal lacks merits and bonafides and hence the same is liable to be dismissed.

18 In the result, the appeal is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this miscellaneous appeal, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 15th April, 2015.

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