

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.2671 OF 2006

JUDGMENT:

M/s. New India Assurance Company Limited preferred this appeal aggrieved of the order, dated 15-09-2006, in O.P. No.117 of 2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Medak at Sanga Reddy, whereby and whereunder, the Tribunal fastened joint and several liability on it despite violation of terms and conditions of the insurance policy since driver of the vehicle involved in the accident was not holding valid and effective driving licence of passengers auto-rickshaw that involved in the accident.

2. The appellant herein - M/s. New India Assurance Company Limited is respondent No.2 in the O.P. before the Tribunal, while respondent Nos.1 to 3 are petitioners (claimants) and respondent No.4, who is owner of the auto-rickshaw bearing No.AP-13-W-3022 that involved in the accident is respondent No.1 and respondent No.5 is respondent No.3.

3. Respondent Nos.1 to 3 - petitioners are wife and children, respectively, of Darji Venkatesham, who died in the accident in the instant case, while respondent No.5 is his mother.

4. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

5. The facts, in brief, are that on 22-08-2014 at about 12-00 hours,

midnight, while D. Venaktesham, was travelling in a cycle-rickshaw belonging to his friend, near Srinivasa Theatre, at Ramachandrapuram, auto-rickshaw bearing No.AP-13-W-3022, driven in a rash and negligent manner, dashed the cycle-rickshaw, due to which, he fell down and sustained injuries, and he was shifted to Sai Durga Hospital, Ramachandrapuram, and he was referred to Gandhi Hospital, Secunderabad and while undergoing treatment, he succumbed to the injuries on 27-08-2004; on which intimation, the Station House Officer, Ramachandrapuram Police Station, registered a crime against the driver of the auto-rickshaw. The petitioners, contending that the deceased, besides doing tailoring work, was also pulling cycle-rickshaw and thereby earning Rs.5,000/- per month and contributing almost his earnings for the family, and therefore, sought Rs.4,00,000/- as compensation under Section 166 of the Act by laying the claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

6. Respondent No.1, who is owner of the auto-rickshaw that involved in the accident, remained *ex parte* in the O.P. before the tribunal.

7 . Respondent No.2, insurer of the auto-rickshaw, contested the claim raising various pleas attributing collusion between the petitioners and respondent No.1. Later, respondent No.2 filed additional counter raising a specific plea that the driver of auto-rickshaw was not possessing valid subsisting driving licence as per the extract of Road Transport Authority (RTA), and, as such, it is not liable to pay compensation to the petitioners for violation of terms and conditions of the policy.

8. Respondent No.3 being the mother of the deceased, filed counter stating that she was dependant on the earnings of the deceased and sought share in the claim for compensation made by the petitioners.

9 . Based on the above pleadings, the Tribunal has framed the following four (4) issues in the direction of fixing responsibility for the accident:

“(i) Whether the accident occurred due to the rash and negligent driving of the driver of the crime vehicle?

ii. Whether the Petitioners are entitled for compensation, if so, at what quantum and from whom?

iii. To what relief?

iv. On 24-08-2006, an Additional Issue is framed, viz., Whether the Driver of crime vehicle was not holding valid driving license, as such; Second Respondent is not liable to indemnify the First Respondent?”

10. To prove their stand, petitioner No.1, besides examining herself as PW.1, examined an eyewitness to the occurrence as PW.2 and marked Exs.A-1 to A-6. On behalf of respondent No.2, it has examined one of its officials from the concerned branch office as RW.1 and marked Exs.B-1 and B-2.

11. The Tribunal having appreciated the evidence on record through PW.2 and Exs.A-1, A-3 and A-6, which are the copies of FIR, charge sheet and Motor Vehicle Inspector's report, held issue No.1 in favour of the petitioners. On issue No.2, the Tribunal taking the age of the deceased as 35 years, as recorded in Ex.A-4 inquest panchanama, Ex.A-5 post-mortem examination report, by applying

multiplier '14.81', as per the decision of this Court in **Bhagwan Das v. Mohd. Arif** and placing reliance on the decision of the Hon'ble Apex Court in **General Manager, Kerala State Road Transport Corporation v. Susamma Thomas**, made a proportionate reduction in selection of multiplier and considering the age of the deceased as 35 years, fixing the multiplier as '14', further basing on guess work, as no proof was forthcoming to fix the monthly earnings of the deceased as claimed, fixed his daily wage at Rs.75/- or Rs.2,250/- per month and after deducting $\frac{1}{3}$ rd i.e., Rs.750/- (Rs.2,250/- x $\frac{1}{3}$) therefrom towards his personal expenses, worked out the contribution to the family at Rs.1,500/- per month (Rs.2,250/- - Rs.750/-) or Rs.18,000/- (Rs.1,500/- x 12) per annum, and, multiplying the same with multiplier '14', arrived the loss of dependency at Rs.2,52,000/-.

The Tribunal has also granted Rs.15,000/- towards loss of consortium to petitioner No.1, Rs.15,000/- towards loss of estate, and, thus awarded a total sum of Rs.2,82,000/- towards compensation as against Rs.4,00,000/- claim. The Tribunal while discussing the additional issue touching the violation of terms and conditions of the insurance policy on account of driver of the auto-rickshaw not holding valid subsisting driving licence, placing reliance on the decision of this Court in **United India Insurance Company v. Tam Tam Venkata Reddy and Another**, held that insurance company cannot avoid its liability to pay compensation, and, therefore, mulcted liability on insurance company directing to pay compensation with joint and several liability on insurance company along with respondent No.1, owner of the auto-rickshaw involved in the accident. The Tribunal has also granted interest at 7.5% per annum.

12. It is the aforesaid order, which is under challenge in the instant appeal by the insurer of auto-rickshaw involved in the accident contending in the grounds of appeal that the Tribunal, somehow, did not properly appreciate that the driver of the auto-rickshaw had no valid driving licence to drive the auto-rickshaw at the time of accident

and that accounted for violation of conditions of the insurance policy, despite the evidence on record through RW.1 and Exs.B-1 and B-2. The Insurance Company has also referred to the decision of the Hon'ble Supreme Court in **National Insurance Company Limited v. Kusum Rai and others** for the proposition that if the driver is not possessing proper valid licence at the time of accident, the insurance company is not liable to pay any compensation and, thereby, challenged the direction of the Tribunal in directing it to initially deposit the compensation and, thereafter, to recover the same from the insured.

13. Heard Sri C.V. Rajeeva Reddy, learned counsel for respondent No.2 - insurance company (appellant), and Sri S. Sudarshan, learned counsel for respondent No.3, mother of the deceased.

14. Despite service of notice on respondents Nos.1 to 3 (petitioners), none appears on their behalf. Notice was returned unserved so far as respondent No.4, who is, admittedly, owner of the auto-rickshaw, is concerned. The very fact that the notice addressed to him was the very same address mentioned in the cause title of the O.P., raises presumption that there has been proper service of notice; even non-service also does not make any difference since he remained *ex parte* before the Tribunal.

15. The only point involved in this case is whether driver of the auto-rickshaw possessing driving licence of non-transport light motor vehicle without possessing driving licence to drive transport light motor vehicle accounts for violation of terms and conditions of the insurance policy, and, if so, whether the insurance company is not liable to pay compensation and that the direction of the Tribunal to the insurer to initially deposit and later recover the same from the insured, cannot be sustained?

16. Learned counsel for respondent No.2, insurance company (appellant), placed reliance on the decisions of this Court in **National Insurance Company v. Vidhyadhar Mahirwala and others** and **The New India Assurance Company Limited v. G. Sampoorna**, whereas learned counsel for respondent No.3 (respondent No.5) placed reliance on the decision of the Hon'ble Supreme Court in **S. Iyyapan v. United India Insurance Company Limited and another**.

17. In **Vidhyadhar Mahirwala's Case** (Supra 5), driving licence of the driver of the vehicle involved in the accident was not in force on the date when the accident has taken place. It was not in connection with the driver possessing different category of licence to drive the vehicle other than the one which he was driving at the relevant time. Therefore, on facts, the said decision cannot be made applicable to the facts in the present case. In **Sampoorna's Case** (Supra 6), the driver of the tractor involved in the accident was not holding valid licence as required under Section 3 of the Act and since neither the claimants nor owner of the vehicle disputes the same by adducing the evidence to show that licence was renewed, the insurance company was exonerated from its liability. Again, the fact-situation occurring therein is not the one occurring in the instant case.

18. Adverting to the decision relied on by the learned counsel for respondent No.3 in **S. Iyyapan's Case** (Supra 7), the driver was holding licence to drive light motor vehicle and there was no endorsement on the said licence to drive light motor vehicle used as commercial vehicle, but he was driving the accident vehicle, which was a Mahindra Maxi Cab, a commercial motor vehicle. The Hon'ble Supreme Court referring to the decisions earlier referred to and the

provisions of Section 149 of the Act, held in paragraph No.18, thus:

“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. It is also apt to refer to the decision of the Hon'ble Apex Court in **Kulwant Singh v. Oriental Insurance Company Limited**, wherein, in a similar situation as the one occurring in the instant case, while making the insurance company liable to pay the compensation, held in paragraph Nos.9 and 10, thus:

“9. We find the judgments relied upon cover the issue in favour of the Appellants. In **Annappa Irappa Nesaria** (supra), this Court referred to the provisions of Section 2(21) and (23) of the Motor Vehicles Act, 1988, which are definitions of 'light motor vehicle' and 'medium goods vehicle' respectively and the rules prescribing the forms for the licence, i.e. Rule 14 and Form No.4. It was concluded:

20. From what has been noticed hereinbefore, it is evident that “transport vehicle” has now been substituted for “medium goods vehicle” and “heavy goods vehicle”. The light motor vehicle continued, at the relevant point of time to cover both “light passenger carriage vehicle” and “light goods carriage vehicle”. A driver who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well.

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:

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 (Civil Misc. Appeal No.1016 of 2002, order dated 31.10.2008 (Mad) is, therefore, liable to be set aside.”

20. Thus, the principles laid down by the Hon'ble Apex Court in **S. Iyyapan's and Kulwant Singhs Cases** (Supra 7 and 8), when applied to the fact scenario occurring in the instant case, certainly, it has to be held that there is no merit in the appeal, and, consequently, the same is liable to be dismissed. The point is accordingly answered.

21. Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the order under challenge. There shall be no order as to costs.

22. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

April 13, 2015.

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