HONOURABLE SRI JUSTICE S.RAVI KUMAR

M.A.C.M.A. No.808 OF 2009

Dated 1st May, 2015

Between:

M/s.Bajaj Allianz General Insurance Co., Ltd., represented by its Regional Manager, Hyderabad.

...Appellant.

And:

C.Maheswaramma @ C.Maheswari and another.

…Respondents.

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JUDGMENT:

This appeal is preferred against judgment dated 21-11-2008 in M.V.O.P.No.718 of 2007 on the file of Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, Kurnool.

Brief facts leading to this appeal are as follows:

First respondent herein filed M.V.O.P.No.718 of 2007 contending that she received injuries on 25-2-2007 while she was traveling in an auto bearing No.AP02U-3756, due to rash and negligent driving of the auto driver and that the appellant and second respondent herein are jointly and severally liable to pay compensation.

Insurance Company mainly resisted claim on the ground that driver had no valid driving licence at the time of accident and the owner violated terms and conditions of the policy, as such Insurance Company is not liable.

Motor Accident Claims Tribunal, Kurnool has not accepted the objection of the Insurance Company and granted compensation of Rs.16,000/- with interest against owner and Insurance Company jointly and severally. Aggrieved by the said order, Insurance

Company preferred the present appeal.

Heard both sides.

Advocate for appellant submitted that tribunal erred in holding that the driver was having valid and effective licence as on the date of accident. He further submitted that driver of the vehicle was only having non-transport licence whereas he should possess transport licence and the lower court failed to draw distinction between these two. He further submitted that the lower court, instead of ordering pay and recovery while fixing liability with the owner fixed joint liability therefore the same has to be modified.

On the other hand, advocate for claimant submitted that trial court elaborately discussed this aspect and rightly fixed liability both on owner and Insurance Company and that there are no grounds to interfere with the orders of the lower court.

Now the point that would arise for my consideration in this appeal is whether the order of lower authority is proper, legal and correct?

POINT:

From the evidence, it is clear that driver of auto bearing No.AP21X-4553 was having licence to drive light motor vehicle non-transport as on the date of accident. It is not in dispute for driving an auto one should possess transport driving licence. According to advocate for appellant basic difference for these two licences is, transport licence is for commercial purpose whereas non-transport licence is for own purpose and owner of the vehicle has to entrust the auto to a person having transport licence. He submitted this court in an unreported judgment in M.A.C.M.A.No.604 of 2012 after a thorough analysis of law on subject confirmed the order of the lower tribunal where it directed to pay and recover and the same has to be ordered in this case.

By referring to that judgment, advocate for appellant submitted if the objection of the Insurance Company absorbing it from total liability is not accepted at least pay and recover direction may be given in view of principle laid down by Honourable Supreme Court in *NATIONAL INSURANCE COMPANY LIMITED Vs.VIDHYADHAR MAHARIWALA & OTHERS* (), *UNITED INDIA INSURANCE CO.Ltd., V.LEHRU* ( ), *ORIENITAL INSURANCE COMPANY LIMITED Vs. NANJAPPAN & OTHERS* (), *NATIONAL INSURANCE COMPANY LIMITED Vs. KUSUM RAI & OTHERS* () and *S.IYYAPPAN Vs.UNITED INDIA INSURANCE COMPANY* ().

I have perused the above referred rulings in all the above cases, the Honourable Supreme Court held that if once policy covered the risk, the insurer under Section 149 read with 168 of Motor Vehicles Act is bound to compensate third party claim for violation of policy conditions with the rider pay a recover.

Therefore, as rightly pointed out by advocate for appellant as the driver was not having effective driving licence as on the date of incident, insurer has to be made liable under the principle pay and recover. Therefore, relying on the Supreme Court decisions and decision of this court referred above, objection of Insurance company is upheld.

For these reasons, this appeal is partly allowed modifying award of the Tribunal instead of joint and several liability of owner and the insurer, the liability of the owner is confirmed. However, the Insurance Company shall pay the compensation on behalf of the owner and recover the same from the owner without instituting any separate suit. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 1st May, 2015.

Dvs.
HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs