

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.898 of 2009

JUDGMENT:

This appeal is filed by the 2nd respondent – insurance company challenging the judgment and award dated 21.7.2008 passed in MVOP No.163 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Tirupati, wherein and whereby the Tribunal while awarding an amount of Rs.1,05,300/- to the petitioner as compensation as against a claim of Rs.1,50,000/-, fastened the liability on the 2nd respondent.

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

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

4. On 11.07.2004 the petitioner along with others was proceeding to Tirumala from Tirupati in the jeep bearing No.AP 07 W 3468. When the jeep reached second ghat road, the driver of the jeep had driven the same in a rash and negligent manner and dashed against iron arch on the left side of the road. In connection with the said accident, the Station House Officer, Tirumala Traffic Police Station registered a case in Crime No.17 of 2004 against the driver of the jeep for the offences punishable under sections 279 and 338 of IPC. In the said accident, the petitioner sustained grievous injuries on various parts of the body and took treatment as inpatient in SVRR Hospital, Tirupati and spent huge amount towards medicines and treatment. The Jeep which belongs to the first respondent was validly insured with the second respondent as on the date of accident. Therefore, respondents 1 and 2 are jointly and severally liable to pay compensation to the petitioner. Hence the petitioner filed claim petition under Section 166 of the M.V. Act claiming compensation of Rs.1,50,000/- as compensation from both the respondents.

5. First respondent remained ex parte.

6. Second respondent filed counter denying all the material averments made in the petition inter alia contending that the driver of the jeep was not having valid and effective driving licence as on the date of accident. The first respondent entrusted the jeep knowing fully well that the driver was not having valid and effective driving licence. Therefore, the second respondent is not liable to pay compensation to the petitioner. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence the petition may be dismissed.

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

- 1) Whether the driver of the jeep bearing No.AP 07 W 3468 drove the same in a rash and negligent manner and caused accident on 11.07.2004 and as a result the petitioner sustained injuries?
- 2) Whether the petitioner is entitled for compensation? If so, to what amount? By whom?
- 3) To what relief?

8. During the course of trial, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A.1 to A.6 and Exs.X1 and X2 were marked. On behalf of the second respondent, R.W.1 was examined and Exs.B.1 to B.3 were marked.

9. The Tribunal, after appreciating the oral, documentary evidence and other material available on record, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the jeep and allowed the petition in part by granting Rs.1,05,200/- with interest at 7.5% p.a. as compensation to the petitioner. As stated supra, feeling aggrieved by the judgment and award passed by the Tribunal, the second respondent – insurance company filed the present appeal.

10. The contention of Sri R.Venkata Rao, learned standing counsel for the appellant-2nd respondent is two fold.

(a) The Tribunal failed to appreciate that the driver of the jeep was not having valid and effective driving licence to drive light motor transport vehicle.

(b) The Tribunal wrongly fastened the liability on the second respondent despite the fact that the first respondent violated the terms and conditions of the insurance policy.

11. The contention of Sri P.Govind Reddy, learned counsel for the first respondent-claimant is that the first respondent-owner of the vehicle has not violated the terms and conditions of the policy and, therefore, the appeal is liable to be dismissed.

12. The oral testimony of P.W.1 coupled with Exs.A.1 and A.2 clearly reveals that the accident occurred due to the rash and negligent driving of the driver of the jeep. The finding of the Tribunal is supported by the oral and documentary evidence available on record. Therefore, I am fully agreeing with the finding of the Tribunal on issue No.1. Further, a perusal of the record clearly reveals that the Tribunal awarded only just and reasonable compensation to the petitioner. Viewed from any angle, the compensation awarded by the Tribunal is not on higher side.

13. In such circumstances, the point for consideration in this appeal is:

“Whether the first respondent had violated the terms and conditions of the policy so as to absolve the liability of the second respondent?

POINT:

14. The oral testimony of R.W.1 coupled with Ex.B2 clearly reveals that the driver of the jeep was having driving licence to drive LMV non-transport as on the date of accident. It is not in dispute that the jeep is a light motor vehicle.

15. The contention of the learned counsel for the second respondent is that a driver having licence to drive light motor vehicle non-transport is not entitled to drive light motor vehicle transport. As per Ex.B.2-true copy of the extract of the driving licence, the driver of the crime vehicle is entitled to drive the vehicle in question. If the contents of Ex.B.2 are taken into

consideration, the owner of the crime vehicle has not violated the terms and conditions of the policy.

16. The crucial question that falls for consideration at this juncture is whether driving of light motor vehicle – transport by a driver having licence to drive light motor vehicle non–transport amounts to fundamental breach of terms and conditions of the policy so as to absolve the liability of the insurer? The learned counsel for the second respondent has drawn my attention to various provisions of the Motor Vehicle Act to substantiate his argument.

Section 2 (21): “light motor vehicle” 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.

Section 2 (35): “public service vehicle” means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage.

Section 2 (47): “transport vehicle” means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle;

17. Section 2 of the Act defines various types/classes of the vehicle. The phrase ‘light motor vehicle’ as defined in Section 2 (21) includes a transport vehicle. Section 3 of the Act mandates that one has to obtain valid and effective driving licence to drive vehicle in public place. A combined reading of Sections 2 and 3 of the Act demonstrates that a person having licence to drive a particular type / class of vehicle is not entitled to drive different type of vehicles. Section 10 of the Act deals with forms and contents of the licences. It is not out of place to extract Section 10 (2) of the Act, which reads as follows:

10 (2) A learner’s licence or, as the case may be, driving licence shall also be expressed as entitling the holder to drive a motor vehicle of one or more of the following classes, namely:

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- (a) motor cycle without gear;
- (b) motor cycle with gear;
- (c) invalid carriage;
- (d) light motor vehicle;

- (e) transport vehicle
- (i) road-roller;"
- (j) motor vehicle of a specified description.

18. A perusal of Sub-Section 2 of Section 10 of the Act postulates that in order to drive the vehicles set out therein one has to obtain driving licence of that particular type of vehicle. The phrase 'transport vehicle' was substituted by Act 54 of 1994 to medium type goods vehicle and heavy goods vehicle. The definition of light motor vehicle either in Section 2 (21) or Section 10 (2) (d) of the Act remains unaltered even after amendment.

19. Section 14 of the Act deals with 'currency of driving licence'. The currency of the licence to drive a transport vehicle is 3 years. The currency of the licence to drive light motor vehicle is 20 years. The definition of light motor vehicle encompasses in it transport as well as non-transport vehicle. The phrase 'transport vehicle' as used in section 10 of the Act refers to medium goods vehicle and heavy goods vehicle only.

20. To substantiate the argument, the learned counsel for the second respondent has drawn my attention to the following decisions:

Oriental Insurance Co. Ltd Vs. Syed Ibrahim^[1] and National Insurance Co. Ltd, Vs. Kaushalya Devi.^[2] Wherein the Hon'ble apex Court held at para No.9 as follows:

"The High Court, however, held that the driving licence of the Driver Shyam Lal was not valid, stating:

"Since I am of the opinion that the endorsement permitting Shyam Lal to drive heavy goods vehicle was ante dated and was not existing on the date of accident it is clear that the owner could not have handed over the vehicle to a person who held a valid driving licence. On 16.3.2000 Shyam Lal only held a licence to drive a light transport vehicle and the owner could not have checked or verified the licence for driving a heavy goods vehicle. In fact in this case the owner has not even stepped into the witness box to say anything in this regard. Therefore, I hold that the insurance company was wrongly held liable to pay compensation."

As regards to the question as to whether the deceased was an unauthorized passenger, it accepted the plea of the insurance

company.”

21. As per the principle enunciated in the cases cited supra, a driver having licence to drive light motor vehicle is not entitled to drive the heavy goods vehicle. Allowing a person to drive heavy goods vehicle who has licence to drive only light motor vehicle would amount to breach of terms and conditions of the policy. Therefore, there is no obligation on the part of the insurer to indemnify the insured.

New India Assurance Co. Ltd, Tirupati Vs. G. Sampoorna ^[3]

22. As per the ratio laid down in the case cited supra, if the insured entrusts the vehicle to a driver whose licence is not in force at the relevant point of time, the insurer is not liable to pay compensation to third parties. The facts of the case on hand are entire different to the facts of the cases cited supra. Therefore, I am of the considered view that the principle laid down in the cases cited supra is not applicable to the facts of the case on hand.

Oriental Insurance Company Ltd Vs. Angad Kol ^[4]

New India Assurance Co. Ltd Vs. Roshanben Rahemansha Fakir ^[5]

National Insurance Co. Ltd Vs. Kusum Rai ^[6]

23. As per the principle enunciated in the cases cited supra, driving of light motor vehicle transport by a driver having licence to drive light motor vehicle non-transport would amount to violation of terms and conditions of the policy thereby absolves the liability of the insurer. The facts of the case on hand are almost identical to the facts of the cases cited supra.

24. The crucial question that falls for consideration at this juncture is whether mere non-obtaining of necessary endorsement/badge by the driver by itself would amount to fundamental breach of the terms and conditions of the policy or whether it is a technical or minor lach?

25. As observed earlier, the definition of light motor vehicle under Section 2 (21) and Section 10 (d) remains intact even after 1994

amendment. The word 'transport vehicle' was substituted by medium goods and heavy goods vehicle.

26. For better appreciation of rival contentions, this Court is placing reliance on the following decisions.

National Insurance Company Limited Vs. Annappa Irappa Nesaria^[7]

wherein the Hon'ble apex Court observed as under:

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 authorised to drive a light goods vehicle as well.

National Insurance Co. Ltd, Vs. Swaran Singh^[8] wherein the

Hon'ble apex Court held as follows:

47. If a person has been given a licence for a particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. As for example, when a person is granted a licence for driving a light motor vehicle, he can drive either a car or a jeep and it is not necessary that he must have driving licence both for car and jeep separately.

88. Section 10 of the Act provides for forms and contents of licences to drive. The licence has to be granted in the prescribed form. Thus, a licence to drive a light motor vehicle would entitle the holder there to drive the vehicle falling within that class or description.

89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxi-cab", "medium goods vehicle", "medium passenger motor vehicle", "motor-cab",

“motorcycle”, “omnibus”, “private service vehicle”, “semi-trailer”, “tourist vehicle”, “tractor”, “trailer” and “transport vehicle”. In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for “motorcycle without gear”, [*sic* may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for “light motor vehicle” is found to be driving a “maxi-cab”, “motor-cab” or “omnibus” for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

90. We have construed and determined the scope of sub-clause (ii) of sub-section (2) of Section 149 of the Act. Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.

110. The summary of our findings to the various issues as raised in these petitions is as follows:

(i) xxxx

(ii) xxxx

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2) (a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) xxxx

(v) xxxx

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid

licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply “the rule of main purpose” and the concept of “fundamental breach” to allow defences available to the insurer under Section 149(2) of the Act.

27. In the instant case, it is not in dispute that the vehicle in question is a light motor vehicle. At the time of accident, the vehicle in question was being driven by the driver having licence to drive a light motor vehicle non-transport. The vehicle in question was classified as light motor vehicle. Undoubtedly, the driver was having a licence to drive the same class/type of vehicle i.e. light motor vehicle. The driving skill required to drive the light motor vehicle non-transport and light motor vehicle transport is one and the same. The currency of the licence period may be different. Absolutely there is no material on record to establish the proximate cause for the accident was non having of valid and effective driving licence. It is not the case of the second respondent that the driver of the vehicle was not disqualified to obtain a licence. Mere absence of obtaining necessary endorsement/badge on the licence by itself would not amount to fundamental breach of terms and conditions of the policy so as to absolve the liability of the insurer. If the insured entrusted the vehicle to the driver to drive different class of vehicle than the vehicle for which he is having licence to drive, then it would amount to fundamental breach of terms and conditions of the policy. Section 10 (2) (d) of the Act does not specifically provide different forms of licences in respect of the light motor vehicle. In ***S.Iyyapan Vs. United India Insurance Co.***^[9] 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,

- (i) the vehicle was not driven by a named person,
- (ii) it was being driven by a person who was not having a duly granted licence, and
- (iii) person driving the vehicle was disqualified to hold and obtain a driving licence.

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 judgment⁵ is, therefore, liable to be set aside.

19. We, therefore, allow this appeal, set aside the impugned judgment 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 Vs. Oriental Insurance Co. Ltd ^[10] 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.

28. 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 recent judgments of the apex Court, 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 insurance company or to enable the insurer to recover the amount of compensation from the insured, after satisfying the award passed by the Tribunal.

29. The first respondent being the owner of the crime vehicle is vicariously liable to the wrongful acts done by his employee. The crime vehicle was insured with the second respondent insurance company as on the date of accident. Hence the second respondent has to indemnify the liability of the first respondent. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

30. In the result, the appeal is dismissed. No costs. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 16th February, 2015.

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[1] 2007 ACJ 2816

[2] 2008 ACJ 2144

[3] 2010 (5) ALT 105

[4] (2009) 11 SCC 356

[5] 2008 ACJ 2161

[6] 2006 ACJ 1336

[7] (2008) 3 SCC 464

[8] (2004) 3 SCC 297

[9] (2013) 7 SCC 62

[10] 2014 ACJ 2873