THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.3767 of 2009

JUDGMENT:

Challenging the Award dated 20.01.2009 in M.V.O.P.No.134 of 2006 passed by the Chairman, M.A.C.T-cum-I Additional District Judge, Kadapa (for short 'Tribunal'), the 2nd respondent in OP/ National Insurance Company Limited preferred the instant MACMA.

2) On factual side, on 01.02.2003 at 7.30 AM, the claimant boarded the jeep bearing No.AP 03 E 2007 at Railway Kodur to go to Tirupathi. At that time there were three other passengers in the jeep apart from driver and at 8 AM when the jeep reached Mamandur village, the driver drove the vehicle in a rash and negligent manner and lost control and went off to the right side and hit the road side hillock. As a result, the passengers in the jeep sustained injuries. Petitioner received fracture of his left femur and bleeding injuries all over his body. Immediately he was admitted in SVRR Hospital, Tirupathi for treatment. Thereafter, he was shifted to Vijaya Health Centre, Chennai where he took treatment for about 30 days by spending huge expenditure. It is averred that the driver of the offending jeep was responsible for the accident. On these pleas, the claimant filed M.V.O.P.No.134 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short "MV Act") against respondents 1 and 2, who are the owner and insurer of the offending vehicle and claimed Rs.7,10,000/- as compensation.

b) Respondent No.1 remained *ex parte*.

c) Respondent No.2/Insurance Company filed counter denying all the material averments and urged to put the claimant in strict proof. R2 contended that as the owner has violated the terms and conditions of policy, it is not liable to indemnify him. It contended that vehicle had contract carriage permit but was used as stage carriage in violation of permit. Further, the vehicle was a transport vehicle but the driver had only non-transport driving licences and due to the aforesaid violations, R.2 was not liable for the claim.

d) During trial, PWs.1 and 2 were examined and Exs.A.1 to A15 were marked on behalf of the claimants. RWs.1 and 2 were examined and Exs.B1 to B3 were marked on behalf of respondents.

e) The Tribunal on appreciation of oral and documentary evidence awarded a total sum of Rs.4,18,810/- with proportionate costs and interest at 6% p.a. under different heads as follows:

For grievous injuries Rs. 8,000-00

Transportation charges Rs. 31,500-00

Medical expenses Rs. 2,27,310-35

Pain and suffering Rs. 10,000-00

Permanent disability Rs. 42,000-00

Future medical expenses Rs. 1,00,000-00

Rs. 4,18,810-35

Hence, the appeal by the Insurance Company.

3) The parties in the appeal are referred as they stood before the Tribunal.

4) Heard arguments of Sri P.Phalguna Rao, learned Counsel for appellant/Insurance Company and Sri V.Eswaraiah Chowdary, learned counsel for respondents No.1/claimants. Though notice to R.2 was served but there is no representation on his behalf, hence treated as heard.

5 a) Impugning the award, learned counsel for appellant firstly argued that there are two gross violations in this case, one is violation of permit and another is violation of driving licence committed by the owner and driver of the crime vehicle and thereby the Tribunal ought to have exonerated the Insurance Company. Expatiating it, learned

counsel argued that as per the evidence of RW.2, the vehicle which is a maxi cab is a contract carriage vehicle intended to carry the passengers from one point to another point but in violation of the permit, some passengers particularly the petitioner was picked up on the midway at Railway Kodur to carry to Tirupati and therefore, there was a gross infraction of the permit issued by Road Transport Authorities (R.T.A). He submitted that for violation of the permit, the Insurance Company can be exonerated or at best, it may be ordered to pay and recover the compensation amount. On this aspect, he relied upon the decision reported in ***National Insurance Co. Ltd. vs. Challa Bharathamma.***

b) Secondly, he argued that the driver Venkatesh had licence to drive non-transport vehicle as per Ex.B.2—driving licence but he drove the transport vehicle in violation of the policy and caused the accident and therefore, for the above said violations, the Insurance Company is not liable.

c) Thirdly, he argued that compensation awarded under different heads is highly excessive and exorbitant.

He thus prayed to allow the appeal and exonerate the Insurance Company from its liability.

6) Per contra, learned counsel for 1st respondent/ claimant supported the award and prayed for dismissal of the appeal.

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

"Whether the award passed by the Tribunal is factually and legally correct?"

8) **POINT**: As can be seen from the evidence of RW.2 coupled with Ex.B.3—letter issued by the RTA, Chittoor, the crime vehicle which is a maxi cab was permitted to use as a contract carriage. However, the admission of PW.1 would show that the vehicle was coming from Rajampet and he boarded on the midway at Railway Kodur. So as contended by the appellant/ Insurance Company, the vehicle was

used as a stage carriage. Now the point is, by that count alone whether the Insurance Company can be absolved from its liability. Admittedly, in this case policy was in force and violation of the permit was not the prime cause for the accident. Therefore, the Insurance Company cannot be exempted from liability on the sole ground of violation of the permit. In the ***Challa Bharathamma'***s case (1 supra), the Auto rickshaw in question which met with accident had no permit to ply. Even then Hon'ble Apex Court held that the Insurance Company should pay compensation at first and then recover from the insured. Therefore, the instance case stands on a better footing for the reason that unlike in ***Challa Bharathamma'***s case (1 supra), here there is no lack of permit but only violation of the permit. Therefore, the Insurance Company cannot resort to repudiate the claim but it can pay and recover the compensation amount from the insured.

9) Then coming to the violation of driving licence, it is true as per Ex.B.2, the driver had licence to drive Light Motor Vehicle (LMV)-Non-transport by the date of accident and subsequently he acquired licence to drive LMV transport vehicles. Be that it may, on the date of accident he was not duly licensed to drive the crime vehicle. Again the question is whether Insurance Company can be exonerated from the liability merely because the driver had no transport driving licence by the date of accident, the answer is emphatic no in view of the decision rendered by the Hon'ble Apex Court in the case of ***National Insurance Company Limited vs. Swaran Singh***. In the said case, Hon'ble Apex Court was dealing with wide spectrum of defence pleas of Insurance Companies basing on the deficiencies in driving licences. Such deficiencies are:

a. Fake driving licenses of the driver.

b. Driver not having licence whatsoever.

c. No renewal of driving licence as on the date of accident.

d. License granted for one class or description of vehicle but vehicle involved in accident was of different class or description.

e. Driver holding only a learner's licence.

The Apex Court after discussing various issues involved in this regard, summarized its findings thus:

i. *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 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 duly licensed driver or one who was not disqualified to drive at the relevant time.*

ii. *The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.*

iii. *Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid license by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards 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 insured under section 149(2) of the Act.*

iv. *The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case.*

v. *Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party* *under the award of the tribunal.*

10) From the above summarization, it is clear that an Insurance Company in order to succeed in its defence pleas touching the driving licence issues must:

a. Firstly establish 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 vehicle by a duly licensed driver or one who was not disqualified to driving at the relevant time.

b. Secondly, the breach which was committed by the insured was so fundamental as is found to have contributed to the cause of the accident.

Upon establishing the above conditions by the Insurance Company, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal.

11) Thus as per the dictum laid down in the above decision, for mere holding a different driving licence by the driver, the Insurance Company cannot be exonerated. On the other hand, the Insurance Company can pay the compensation and recover from the insured. Therefore, none of the grounds raised by the Insurance Company will be strong enough to exonerate the Insurance Company from the liability.

12) The next argument of the Insurance Company is concerned, on a perusal of the award, this Court is of the view that compensation awarded under different heads is just and reasonable and there is no need to interfere with the same.

13) In the result, this MACMA is partly allowed and ordered as

follows:

a. The appellant/Insurance Company is directed to pay compensation awarded by the Tribunal with costs and interest @ 6% p.a. from the date of OP till the date of realisation within two months from the date of this judgment, failing which execution can be taken out against it.

b. The appellant/Insurance Company is at liberty to recover the compensation amount paid by it from the owner of the vehicle (R.1 in OP). For clarity sake, if any compensation is already paid by the Insurance Company, it shall recover the same from the owner but not claimant.

U. DURGA PRASAD RAO, J

Date: 04.03.2015

Note: L.R. Copy to be marked: Yes / No

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