IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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L.P.A. Nos.10 and 18 of 2001

Between:

LPA No.10 of 2001:

Vankrot Narayana @ Narama.

… Petitioner/Appellant (s)

and

United India Insurance Company Ltd. rep., by its Divisional Manager, Vijayawada, Krishna District.

… Respondent (s)

DATE OF JUDGMENT PRONOUNCED: 20.07.2015.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN & HON'BLE SRI JUSTICE S. RAVI KUMAR

1	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2	Whether the copies of judgment may be marked to Law Reports/Journals	Yes/No
3	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE S. RAVI KUMAR

L.P.A. Nos.10 and 18 of 2001

COMMON JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

The appellant, in both these appeals, is the claimant in MVOP No.569 of 1996 before the Motor Vehicles Accidents Claims Tribunal, Guntur. He filed a petition under Section 166 and 163-A of the Motor Vehicles Act claiming compensation of Rs.80,000/- for the injuries sustained by him in the motor accident which took place on 16.05.1996 at about 6.00 am. whereby he suffered a fracture to his pelvis.

In its order dated 27.01.1999, the Tribunal held that the documents and evidence of P.W-1 established that the accident occurred due to the rash and negligent driving of the driver of the lorry; the owner of the vehicle was himself the driver; he had a licence to drive light commercial vehicles only; he did not have any licence to drive a heavy transport vehicle; the vehicle, which was involved in the accident, was a heavy transport vehicle; a condition was stipulated in the insurance policy that the insurance company was liable only in the event of the driver possessing a valid and effective driving licence to drive the vehicle; the driver, who drove the vehicle, was not authorized to drive a heavy goods vehicle; though the 1st respondent was found to have a licence to drive the vehicle, he was authorized to drive only a light motor vehicle; it could not be said that he possessed a valid and effective driving licence at the time of the accident; and the insurance company was, therefore, not liable to meet the claim of the petitioner. The Tribunal further held that, even if the petitioner failed to prove fault liability, he was entitled to get compensation under the no fault liability and, therefore, he was entitled to compensation of Rs.25,000/- from both the insurance company and the owner of the vehicle.

Aggrieved thereby the insurance company carried the matter in appeal, in CMA No.2063 of 1999, before this Court. The claimants, before the Tribunal, also filed their cross-objections. Both CMA No.2063 of 1999 and the cross-objections were heard together. A learned single judge of this Court, by his order dated 29.06.2000 following the law declared by the Supreme Court in **National Insurance Co. Ltd v. Jethu Ram**[1], held that, where the insurance company is not held liable under the insurance policy to pay compensation, it cannot be held liable to pay any amount to a third party as no fault liability. Aggrieved by the order passed by the Learned single judge in CMA No.2063 of 1999, the claimants have preferred LPA No.10 of 2001, and against the dismissal of the cross-objections, they have preferred LPA No.18 of 2001.

Sri A. Rajendra Babu, Learned Counsel for the appellant, would draw attention of this Court to the findings recorded by the Tribunal to contend that as the rash and negligent act was held established, and the claimant was found to have suffered injuries, the Tribunal erred in not awarding the claimants the compensation sought for of Rs.80,000/-; and, even otherwise, the insurance company ought to have paid the claimants Rs.25,000/-, as directed to be paid by the Tribunal, as no fault liability, and to later recover this amount from the insured (owner of the vehicle). Learned Counsel would rely on **S. Iyyapan v. United India Insurance Co. Ltd.**[2] and **Kulwant Singh v. Oriental Insurance Co. Ltd.**[3].

On the other hand Mrs. A. Malathi, Learned Counsel for the Insurance company, would submit that the learned Single Judge had rightly allowed CMA No.2063 of 1999, and dismissed the cross-objections, as the provisions, relating to “no fault liability”, were not attracted in the present case; the Tribunal had specifically recorded a finding that the accident took place only on account of the rash and negligent driving of the owner of the insured vehicle who did not have a valid driving licence; and, in such circumstances, no interference was called for in these appeals.

Under Section 140(1) of the Motor Vehicles Act, where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle, the owner of the vehicle shall be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the said Section. Section 142 stipulates that, for the purposes of the Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of Section 140 if such person has suffered, by reason of the accident, any injury or injuries involving (a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or (b) destruction or permanent impairing of the powers of any member or joint; or (c) permanent disfiguration of the head or face.

The injury suffered by the claimant is a fracture to the pelvis. There is no finding recorded by the Tribunal that the claimant suffered from any permanent disablement much less of the nature enumerated in clauses (a) to (c) of Section 142. The stipulation for payment of no fault liability, under Section 140 read with Section 142 of the Motor Vehicles Act, is not attracted; and to the extent the learned Single Judge has dismissed the appeal, holding that the insurance company was not liable to pay any amount under the head "no fault liability", no interference is called for.

Following its earlier judgment in **New Insurance Company v Kamla**[4], the Supreme Court, in **S.Iyyappan**[2], held that the insurer and the insured were bound by the conditions enumerated in the policy; the insurer was not liable to the insured if there was violation of any policy conditions; but the insurer, who was made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued, shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of the policy conditions on account of the vehicle driven without a valid driving licence. The Supreme Court further observed:

> "…..**The principle laid down in the said decision has been followed by a three-Judge Bench of this Court with approval in Sohan Lal Passi v. P. Sesh Reddy (1996) 5 SCC 21. 25. The position can be summed up thus**: The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. **But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence.** Learned counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person……." (emphasis supplied)

The judgment in **S. Iyyapan**[2] was followed by the Supreme Court in **Kulwant Singh**[3] wherein it was held that the insurance company cannot disown its liability.

If the claimants are held entitled to be paid compensation under Section 166 of the Motor Vehicles Act (fault liability), the law declared by the Supreme Court in **S. Iyyapan**[2] and **Kulwant Singh**[3] would require the insurance company to pay the amount to the third party, and then recover it from the insured. The fact, however, remains that the Tribunal has not adjudicated on the appellants claim to be paid compensation for the rash and negligent act of the owner-cum-driver of the vehicle (the insured) on the ground that the insurance company cannot be held liable for the negligent act of the owner in driving the vehicle without a valid and effective driving licence. What the Tribunal failed to note is that, as against third parties, even if the owner of the vehicle is held liable, the insurance company could be called upon to compensate the injured, and later recover the amount from the insured. As the Tribunal has failed to determine the quantum of compensation payable to the claimants for the injuries suffered by the injured, we consider it appropriate to set aside the orders under appeal, and remand the matter to the Tribunal for its consideration afresh on the extent of compensation payable to the claimant for the injury sustained by him on account of the rash and negligent act of the owner-cum-driver of the insured vehicle.

As the claim relates to the year 1996, we request the Tribunal to adjudicate MVOP No.569 of 1996 with utmost expedition, preferably within six months from the date of receipt of a copy of this order. Needless to state that the Tribunal shall give the parties to the O.P. an opportunity of being heard before passing an order afresh and in accordance with law. Both the LPAs are disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN

S. RAVI KUMAR

Date:20.07.2015.

MRKR

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[1] (1998) ACJ 921

[2] (2013) 7 SCC 62

[3] (2015) 2 SCC 186

[4] (2001) 4 SCC 342