THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1025 of 2009

JUDGMENT:

Aggrieved by the Award dated 29.08.2008 in MVOP No.5 of 2005 passed by the Chairman, M.A.C.T-cum-V Addl. District and Sessions Judge, Kurnool at Nandyal (for short "the Tribunal"), the Claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a. The case of the claimant is that on 29.04.2004 at about 5.00 am the minor claimant along with his family members was going in an Indica Car bearing No.AP 21 H 5681 from Peddakottala village and when the Car reached near Reddypalle Cheruvu Katta of Pullampeta Mandal on Kodur-Rajampet high way, an Eicher Van bearing No.AP 04 U 5662 being driven by its driver in a rash and negligent manner came in opposite direction and dashed against the Car. Thereby, the minor claimant and other persons who were travelling in the Car sustained grievous injuries. It is averred that Van driver was responsible for the accident and because of the accident, the claimant incurred Rs.50,000/- as medical expenses. On these pleas, the minor claimant filed M.V.O.P.No.05 of 2005 under Sections 166 of Motor Vehicles Act, 1988 (for short "M.V Act") against respondent Nos. 1 and 2, who are the owner and insurer of the Eicher Van and Respondent Nos.3 and 4, who are owner and insurer of the Car and claimed Rs.2,00,000/- as compensation.

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

c. Respondent No.2 filed Counter denying all material averments and urged to put the claimant in strict proof. It contended that the accident was occurred due to the negligence of the driver of Indica Car and the said driver and also the driver of van had no valid and effective driving licence at the time of accident and hence the insurer is not liable to pay any compensation. It further contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

d. Respondent No.3 and 4 filed Counters denying all material averments and urged to put the claimant in strict proof. They contended that the accident was occurred due to the negligence of the driver of Eicher Van but not due to the driver of the Car and the driver of the car was having valid and effective driving licence at the time of accident and hence, the respondent Nos. 1 and 2 alone are liable to pay the compensation.

e. Common evidence was adduced in this O.P and other connected O.Ps. On behalf of petitioners in all the O.Ps, PWs.1 to 4 were examined and Exs.A.1 to A.16 and Exs.X1 to X.5 were marked. On behalf of respondents, RWs.1 to 4 were examined and Exs.B.1 and B.2 were marked.

f. The Tribunal, on appreciation of oral and documentary evidence, has awarded a sum of Rs.47,000/- with costs and interest at 7.5% p.a under different heads as follows against 1st respondent and dismissed claim against other respondents:

Compensation for fracture injuries Rs.20,000-00

Medical expenditure Rs.20,000-00

Pain and suffering Rs. 5,000-00

Extra nourishment Rs. 2,000-00

Total Rs.47,000-00

Hence, the appeal by Claimant.

3) Heard arguments of Sri B.S.Reddy, learned counsel for appellant/ claimant and Smt.S.A.V.Ratnam, learned counsel for respondent No.2. Notices sent to respondents 1, 3 and 4 were returned unserved.

4) The parties in this appeal are referred as they are arrayed before the lower Tribunal.

5 a) Opposing the award learned counsel for the appellant/claimant firstly argued that the Tribunal erred in totally exonerating the 2nd respondent/ Insurance Company holding that the driver of the van possessed licence to drive Light Motor Vehicle (LMV) (Transport) and the crime vehicle was a HMV. He argued that as the Eicher van is a transport and Medium Motor Vehicle (MMV) and the driver possessed a valid LMV (Transport) licence which is slightly a different one as the claim relates to third party and policy was in force, the Tribunal ought to have ordered Insurance Company to pay compensation and recover from the insured. In this context, he relied upon the following decisions:

i. ***S. Iyyapan vs. United India Insurance Company Limited and other***

ii. ***Bajaj Allianz General Insurance Co. Ltd. vs. Kalaguri Naganna and others***

b) Secondly, he argued that compensation awarded is low and inadequate. Expatiating it, he submitted that the Tribunal has not properly considered the medical expenditure incurred by the claimant and awarded low amount under that head. Further, it awarded a meager amount for pain and suffering inspite of the fact that the tender aged boy suffered fracture to his left humerus.

He thus prayed to allow the appeal and fasten liability on the

Insurance Company and also enhance compensation suitably.

6) Per contra, learned counsel for second respondent/Insurance Company, while supporting the award contended that the driver possessed licence to drive only LMV(transport) whereas the crime vehicle was Heavy Motor Vehicle(HMV) and therefore, he was not authorised to drive the type of vehicle involved in the accident and the owner knowingly allowed such driver to drive the vehicle and thereby committed breach of the terms of the policy and hence, the lower Tribunal rightly exonerated the Insurance Company from the liability. Learned counsel further argued that the compensation awarded under different heads was just and reasonable inasmuch as the fracture to his left humerus was well-united and he did not suffer any disability and the medical expenditure incurred by him was also a moderate one and hence the Tribunal awarded Rs.20,000/- for the same, which is just and reasonable. She thus prayed to dismiss the appeal.

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

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

8) **<u>POINT</u>**: The accident, involvement of the car bearing No.AP 21 H 5681 and van bearing No.AP 04 U 5662 and minor claimant suffering injuries are all admitted facts.

a) The first contention of appellant is that the Tribunal ought to have directed Insurance Company to pay compensation and recover from the insured. In this context, a perusal of the evidence shows that the accident was occurred due to the fault of driver of the tempo Eicher AP 04 V 5662 namely P.Krishnamraju. As per Ex.X.1—driving licence extract, the said driver holds licence to drive LMV (transport) for the period 10.05.1988 to 24.02.2008. Whereas, the crime vehicle is a tempo Eicher and a transport goods vehicle. As per the evidence of RW.4—the-then M.V.Inspector, Rajampet, the crime vehicle i.e.

Eicher is a medium goods vehicle and it is a transport vehicle. So from the record, it is clear that the driver was not authorised to drive Medium Motor Vehicle as he possessed licence to drive only LMV (transport).

9) Now the point is whether on this count, the Insurance Company can be totally exonerated from the liability. In ***S.Iyyappan***'s case(1 supra), in similar circumstances when the driver held licence to drive Light Motor Vehicle but drove a Commercial Vehicle, the Apex Court taking into consideration that the policy was in force and the claim was of a third party, directed the Insurance Company to pay compensation and then recover the amount from the insured. The ratio in that case squarely applies to the instant case, because in the instant case also the claim is that of a third party and the policy was in force.

a) In ***Kalaguri Naganna***'s case(2 supra) also this Court having observed that the driver who was driving auto a transport vehicle, possessed licence to drive only a non-transport vehicle, held that mere holding a different driving licence cannot be regarded as a fundamental breach and directed the Insurance Company to pay compensation and recover from the insured.

b) So going by the above precedents, the Insurance Company can be directed to pay compensation and recover from the insured.

10) The next contention of the appellant is that the compensation awarded is low and inadequate inasmuch as the Tribunal has not properly considered the medical expenditure. In this context, a perusal of the evidence of PW.4—Dr.K.Krishna Mohan, Orthopedic Surgeon, G.G.H, Kurnool and Consultant Doctor in Kalyani Hospital, Kurnool would show that the claimant suffered fracture shaft left humerus, for which he was treated in Kalyani Hospital by Open Reduction and Internal Fixation with plates and screws. In the cross examination, PW.4 stated that the fracture was well-united and limb was normal and the boy can perform all his duties without any help and he can pursue his academic career without any difficulty. He

clearly stated that there was no disability to the claimant. This is the evidence of PW.4 regarding the nature of injuries, treatment and health condition of the claimant at the time of discharge. His oral evidence is supported by Ex.A.13—wound certificate and Ex.X.1—case sheet issued by Kalyani Hospital, Kurnool.

a) Coming to the medical expenditure, PW.4 stated that Exs.A.14 and A.15—medical bills were issued from their hospital. Ex.A.14 is a receipt for Rs.17,200/- towards hospital charges, whereas Ex.A.15 is a bunch of medical prescriptions and medical bills. The total amount covered by Ex.A.14 and A.15 is Rs.26,760/-. The Tribunal awarded only Rs.20,000/-. It is the submission of learned counsel for appellant that in fact the claimant incurred more medical expenditure but he could submit only available medical bills. Having regard to the grievous nature of fracture injury and treatment in a private hospital from 30.04.2004 to 05.05.2004, it can be said that the claimant must have incurred more than Rs.20,000/- towards medical expenditure. Considering these facts, he is awarded **Rs.30,000/-** towards medical expenditure. Further, since the claimant suffered fracture to his left humerus at a tender-age, he must have experienced lot of pain and suffering. Hence, the compensation for pain and suffering is enhanced to **Rs.10,000/-**. Thus the total compensation payable to the claimant under different heads is as follows:

Compensation for fracture injuries Rs.20,000-00

Medical expenditure Rs.30,000-00

Pain and suffering Rs.10,000-00

Extra nourishment Rs. 2,000-00

Total Rs.62,000-00

Thus the compensation is enhanced by Rs.15,000/- (Rs.62,000/- minus Rs.47,000/-)

11) In the result, the M.A.C.M.A. filed by the claimant is allowed and ordered as follows:

a. The compensation awarded by the Tribunal is enhanced by Rs.15,000/- with proportionate costs and interest @ 7.5% per annum from the date of O.P till the date of realization against respondents 1 and 2 only; and

b. Respondent No.2/Insurance Company in the O.P is directed to deposit the compensation amount within two (2) months from the date of this judgment at first and recover the same from the respondent No.1/owner/insured in the OP treating this judgment as decree, failing which execution can be taken out against them.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 13.11.2015

eha/scs