HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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MACMA.No.74 of 2013

JUDGMENT:

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This appeal is filed against the order and decree dated 06-11-2012 in O.P.No.352 of 2011 on the file of Motor Accident Claims Tribunal (Before the District Judge), Anantapur, wherein the Tribunal awarded an amount of Rs.5,46,000/- towards compensation, out of total claim of Rs.8.00 lakhs, in favour of the appellants with interest

@ 8% per annum from the date of petition till the date of realization against the 1st respondent. Aggrieved by the said award of the Tribunal in not fixing the liability on the 2nd respondent-Insurance company and also for enhancement of compensation, the appellants preferred this appeal.

The case of the appellants, who are the petitioners in the OP, is that deceased Hanumantha Reddy is the husband of the petitioner No.1 and father of petitioners 2 and 3 and son of petitioners 4 and 5 filed the present OP in respect of his death. On 11-11-2010, when said Hanumantha Reddy was traveling on a motor cycle bearing No.AP 02-L-9390, when he reached Peddamma Gudi near Pilligundla colony, the offending auto bearing No.AP-02-TNTR-0542 came in rash and negligent manner and dashed the motor cycle, as a result, he died. Hence claimed compensation against the

1st and 2nd respondent. The offending auto is owned by

the 1st respondent and insured by the 2nd respondent. The Tribunal basing on the evidence of PWs.1 and 2 and Exs.A-1 to A-5 and the evidence of RWs1 and 2 and Exs.B1 to B-3 and Exs.X-1 to X-4 granted compensation of Rs.5,46,000/- fixing the liability on the 1st respondent-owner of the vehicle.

Learned counsel for the appellants submits that the Tribunal erroneously has not fixed the liability on the 2nd respondent-Insurance Company, though the Insurance Company is liable to pay the compensation on the ground that the driver of the auto-rickshaw is not having licence to drive transport vehicle. He also submits that the vehicle was having temporary registration and for the violation of breach of conditions of policy, the Tribunal should have ordered the 2nd respondent to pay the compensation and recover from the 1st respondent. In support of his contentions, he relied on judgments in **Shanta Kumari, Gulshan Chand v. Maratu Devi, Shanta Kumari**[1], **Oriental Insurance Company Limited, Kochi v. Joseph**

V.V. alias Johny and others[2], Oriental Insurance Company Limited, Vijayawada v. Banavathu Gopi (died) per LRs., and others[3], M.Swarupa v. Musapet Narsimhulu[4] and and S.Iyyapan v. United Insurance Company Limited and another[5].

Learned counsel Sri T.Mahender Rao appearing for the 2nd respondent-Insurance Company submits that since the driver of offending auto rickshaw did not have driving licence to drive the transport vehicle and since there is no registration as per Sections 39 and 36 of Motor Vehicles Act (for short " the Act") and there is no permit as per proviso to Section 66 of the Act, the Tribunal has considered the same and rightly fixed the liability on the owner of the vehicle and there is no error committed by the Tribunal. As such, the question of paying compensation by the Insurance Company and recovery from the owner of vehicle does not arise. In support of his contentions, he relied on the judgments of **Sardari and others** v. **Sushil Kumar and others[6]**, **New India Assurance Co.Ltd., v. Roshanben Rahemansha Fakir and another[7]**, **New India Assurance Co.Ltd., Tirupati v. G.Sampoorna and others[8]**, **Traders Pvt. Ltd., Janasatta Karyalaya, Oriental Insurance Co. Ltd., v. New India Assurance Co., Sunanda Widow of Krishna Machivale, Kum.Nutan Krishna Machivale[9]**, **Thara v.Syamala[10]**, **National Insurance Company Limited v. Parvathneni and another[11]**, **State of Haryana and another v. Jasbir Kaur and Others[12]**, **New India Assurance Co.Ltd., v. Charlie and Another[13]**, **National Insurance Co. Ltd., v. Neb Raj and others[14].**

The point that arises for consideration in this appeal is, whether the 2nd respondent-Insurance Company is liable to pay the compensation and whether the compensation can be enhanced?

In this case, there is no dispute that when the accident took place, the vehicle was having temporary registration as on the date. Admittedly, the driver of offending vehicle is having driving licence to drive the non-transport vehicle, but not the transport vehicle and there is subsisting insurance policy for the vehicle.

In **Joseph@Johny** (2 supra) Kerala High Court held as under:

> "By virtue of sub-section (4) of Section 149, Court has to see whether there has to be a direction to pay and recover. If there are violations of the terms of the policy, the question of pay and recovery would arise. When the case of the deceased is not covered under the policy, the question of pay and recover would

not arise."

In the judgment cited (3 supra), this Court in para Nos 19 and 20 held as under:

"A full Bench of Kerala High Court in Oriental Insurance Company Limited v. Joseph V.V. @ Johny, AIR 2012 Kerala, 116, observed that if there are violations of terms of policy, the question of pay and recover would arise. When the case of the deceased was not covered under the policy, question of pay and recover does not arise. It is not in dispute that the present case is one where there is a breach of conditions of the policy.

When once there is a breach of violation of conditions of the policy, in view of the Full Bench judgment of the Kerala High Court and since the injured is a third party to the proceedings, the insurance company is bound to satisfy the claim of third party."

In the judgment cited (4 supra), this Court held in para No.8 as under:

In fact besides Lehru (supra), Swaran Singh's (supra) and Nanjappan (supra) in holding that from lack of licence or fake license or imperfect or defective license, the insurer can be ordered firstly to satisfy the claimants by indemnifying the owner and then recover from the owner and driver;

i) Even in the subsequent expressions of the Apex Court in Kusumlatha and others v.Satbir and others it was held that the Tribunal has got inherent power to issue such directions to insurer to pay and recover. ii) Even in the recent expression of the High Court in Jaya Prakash Agarwal v. Mohd.Kalimulla having considered the law at length taken similar view, while saying at para-39 that each case has to be decided on its own facts and circumstances. iii) Even in the latest expression of the Apex Court in S.Iyyappan v. United India Insurance Company a two judge bench of the Apex Court held that even though the insurer has taken the defence that there is a breach of conditions of the policy excluding from liability, from the driver is not duly licenced in driving the crime vehicle when met with accident, third party has a statutory right under Section 149 read with 168 of the Act to recover compensation from insurer and it was for the insurer to proceed against the insured for recovery of amount paid to third party in case there was any fundamental breach of condition of Insurance policy.

In **S.Iyyapan** (5 supra) the Supreme Court held as follows:

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.

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."

The Supreme Court by considering chapter 11 of the M.V.Act in **Iyyapan case** (5 supra) clearly held that the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive light motor vehicle but before driving light motor vehicle used as commercial vehicle, though no endorsement to drive commercial vehicle was obtained in the driving licence. It was also held that it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It was also clearly held that 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. In similar circumstances when temporary registration of crime vehicle expired and when there was no permit, the Himachal Pradesh High Court in **Shanta Kumari** (1 supra) upheld the award of the Tribunal directing the insurer to pay the compensation and recover. In view of the same, the violations alleged are only regarding breach of conditions of policy. As per law laid down in the above judgments, the Tribunal should have directed the 2nd respondent to pay and recover from the owner of the vehicle- the 1st respondent.

The decisions relied on by learned counsel for the respondent No.2 are prior to the judgment of **Iyyapan v. United Insurance Company Limited** (5 supra)**.**
In **New India Assurance Co.Ltd., v. G.Sampoorna** (8 supra) relied on by the learned counsel for the respondent No.2, this Court held that there is no universal rule to direct the Insurance Company to pay and recover, but however in the facts and circumstances, the Tribunal can exercise its discretion.

As far as enhancement is concerned, the Tribunal has applied proper multiplier and grievance of the appellants is only Rs.15,000/- is awarded towards loss of consortium and only Rs.10,000/- towards loss of estate and Rs.3,000/- towards funeral expenses were granted by the Tribunal. On perusal of the award, the Tribunal has assessed the income properly and applied correct multiplier. Hence, I do not see any grounds to enhance the compensation. Learned counsel for the appellants submits that as per the judgment **Rajesh v. Rajbir Singh**[15], an amount of Rs.1,00,000/- towards loss of consortium and an amount of Rs.25,000/- towards funeral expenses has to be granted. In view of the same, Rs.1,00,000/- is awarded towards loss of consortium instead of Rs.15,000/-, and Rs.25,000/- instead of Rs.3,000/- towards funeral expenses is granted and the total amount

comes to Rs.5,18,400+1,35,000=Rs.6,53,400/-. Now the amounts under different heads are as shown below:

Loss of dependency	Rs.5,18,400/-
Loss of consortium	Rs.1,00,000/-
Funeral expenses	Rs.25,000/-
Loss of estate	Rs.10,000/-
Total	Rs.6,53,400/-

Accordingly, the award of the Tribunal is modified and the Appeal is allowed enhancing the compensation from Rs.5,46,000/- to Rs.6,53,400/- and the 2nd respondent-Insurance Company is directed to pay the amount to the appellants/claimants and recover from the 1st respondent-insured as per the judgments of **National Insurance Company v. Challa Bharatamma**[16] **and Oriental Insurance Company v. Nanjappan**[17]**.** No order as to costs.

As a sequel to the disposal of this appeal, miscellaneous petitions, if any, pending shall stand closed.

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A.RAJASHEKER REDDY,J

03-12-2015
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[1] Laws(HPH)-2014-8-98
[2] AIR 2012 Kerala 116
[3] 2013 (2) ALD 233
[4] Laws (APH) 2014-2-73
[5] (2013) 7 Supreme Court Cases 62
[6] 2008 ACJ 1307
[7] 2008 ACJ 2161
[8] 2010 (5) ALT 105
[9] 2010 ACJ 669
[10] 2009 ACJ 2440
[11] (2009) 8 Supreme Court Cases 785
[12] 2003 ACJ 1800
[13] 2005 ACJ 1131
[14] 2004 ACJ 209
[15] (2013) 9 SCC 54
[16] 2004 ACJ 2094
[17] 2004 ACJ 721