HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.931 of 2009

JUDGMENT:

This appeal is filed by the insurance company challenging the judgment and award dated 12.9.2008 passed in O.P. No.255 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Madanapalle.

2. The parties will hereinafter be referred to as they are arrayed before the Tribunal for the sake of convenience.

3. The facts leading to filing of the present appeal, in brief, are as follows: On the intervening night of 29/30.7.2007 Madduralla Veerabhadraiah boarded the auto bearing No.AP 03U 5990 to go to Yellamma Tirunala at Kalikiri town. When the auto reached Marrikuntapalle bus stop, the driver of tractor and trailer bearing Nos.AP 03AA 8557 and AP 03 AA 8558 had driven the same in a rash and negligent manner and dashed against the auto. The accident occurred due to the rash and negligent driving of the driver of the tractor and trailer against whom the Station House Officer, Kalikiri Police Station registered a case in Crime No.34 of 2007 under Section 304-A IPC. Veerabhadraiah (hereinafter referred to as, the deceased) succumbed to the injuries while undergoing treatment in the hospital of Dr.Kishore Kumar. By the time of the accident, the deceased was aged about 37 years and used to earn Rs.9,000/- per month. The petitioners are dependants on the income of the deceased. The tractor and trailer, which belong to the first respondent, was insured with the second respondent with effect from 25.5.2007 to 24.5.2008. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.3,00,000/- to the petitioners with interest and costs.

4. The first respondent remained *ex parte*. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that the first respondent entrusted the tractor and trailer to the driver knowing fully well that he was not having valid and effective driving licence to drive the tractor and trailer and thereby the first respondent violated the terms and conditions of the policy. Therefore, there is no contractual or statutory obligation on the part of the second respondent to indemnify the liability of the first respondent. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition is liable to be dismissed so far as the second respondent is concerned.

5. Basing on the above pleadings, the Tribunal framed the following issues:

1) Whether the accident occurred due to rash and negligent driving of offending Tractor and Trailer bearing No.AP 03 AA 8557, AP 03 AA 8558 involved in the accident resulting in death of the deceased Maddiralla Veerabhadraiah?
2) Whether the petitioners are entitled for compensation? If so, by whom and to what amount?
3) To what relief?

6. During the course of the trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A1 to A12 were marked. On behalf of the second respondent, R.W.1 was examined and Ex.B1 was marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the tractor and trailer, which resulted in the death of the deceased, and allowed the petition by awarding compensation of Rs.5,57,000/- with interest at 7.5% per annum from the date of petition till the date of realisation, directing the respondent Nos.1 and 2 jointly and severally pay the compensation. Feeling aggrieved by the judgment and award,

the second respondent preferred the present appeal.

8. Heard Sri A.Rama Krishna Reddy, learned standing counsel for the appellant–second respondent and Sri D.Kodanda Rami Reddy, learned counsel for the claimants – petitioners.

9. The contention of the learned counsel for the appellant is two fold:

(1) The Tribunal committed error while not deducting 1/3rd towards personal expenses of the deceased; and

(2) The Tribunal wrongly fastened the liability on the second respondent though the driver of the tractor and trailer was not having valid and effective driving licence as on the date of the accident.

Per contra, the learned counsel for the claimants submitted that the Tribunal has awarded just and reasonable compensation. He further submitted that the finding of the Tribunal that the driver of the tractor and trailer was having valid and effective driving licence is fully supported by the material available on record.

10. Now the points that arise for consideration in this appeal are:

> *(i) Whether the Tribunal has committed any error while awarding compensation?*
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> *(ii) Whether the first respondent had violated the terms and conditions of the policy so as to absolve the liability of the second respondent – appellant?*

Point No.1:

11. As per the finding of the Tribunal, on issue No.1, the accident occurred due to rash and negligent driving of the driver of the tractor and trailer. The Tribunal has assigned cogent and valid reasons to its finding. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Having regard to the facts and circumstances of the case, this court is of the considered view that the accident occurred

due to rash and negligent driving of the driver of the tractor and trailer, which resulted in death of the deceased.

12. The Tribunal, by placing reliance on the decision in **Branch Manager, Oriental Fire and General Insurance Co. Ltd., v Dr.C.Chandra Obula Reddy**[1], granted compensation of Rs.5,57,000/- even though the petitioners claimed an amount of Rs.3,00,000/- only. By the time of the accident, the deceased was aged about 40 years. The Tribunal rightly applied the multiplier '15'. Basing on the material available on record, the Tribunal arrived at a conclusion that the deceased may earn Rs.3,000/- per month. There are no grounds much less valid grounds to set aside the finding of the Tribunal so far as the income of the deceased is concerned. As rightly pointed out by the learned counsel for the second respondent, the Tribunal has not deducted any amount towards personal expenses of the deceased and thereby committed an error. In the present case, the claimants are '5' in number. As per the principle enunciated in **Sarla Verma v DTC**[2], the Tribunal or court has to deduct 1/4th of the amount towards personal expenses of the deceased if the number of claimants is 4 to 6. The contribution of the deceased to the family is (Rs.3,000 – 750 (1/4th) Rs.2,250/- per month. The loss of dependency would come to (Rs.2,250 X 12 X 15) Rs.4,05,000/-.

13. The Tribunal awarded Rs.15,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses, which are on lesser side. In view of the principle enunciated in **Ramilaben Chinubhai Parmar v National Insurance Company Ltd.**[3], the petitioners are entitled to Rs.50,000/- towards conventional damages. The petitioners are entitled to the total compensation under the following heads:

			Rs.
1.	Loss of dependency	:	4,05,000

2.	Conventional damages	:	50,000
	Total	:	4,55,000

The Tribunal committed grave error by awarding an amount of Rs.5,57,000/-. The petitioners are entitled for an amount of Rs.4,55,000/- only towards compensation. Accordingly, the point No.1 is answered.

Point No.2:

14. The oral testimony of R.W.1 coupled with Ex.A12, copy of driving licence, reveals that the driver of the tractor and trailer was having a licence. The contention of learned counsel for the second respondent is that in order to drive tractor and trailer, one has to obtain endorsement on the driving licence i.e., tractor and trailer. The question that falls for consideration is that mere non-obtaining of endorsement on driving licence would amount to fundamental breach of terms and conditions of the policy. Section 10 of the Motor Vehicles Act postulates different types of licences. Admittedly the tractor and trailer is a light motor vehicle. It is not the case of the second respondent that the proximate cause of the accident is due to non-obtaining of necessary endorsement on driving licence of the driver of the crime vehicle.

In ***S.Iyyapan Vs. United India Insurance Co.***[4] 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,
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> (*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 judgment[5] 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.

In ***Kulwant Singh and others Vs. Oriental Insurance Co. Ltd***[5] 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."
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> 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.

15. The facts of the case on hand 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 cases cited supra, I am unable to accede to the contention of learned counsel for the insurance company that the owner of the vehicle has violated the terms and conditions of the policy. Accordingly, point No.2 is answered against the second respondent.

16. In the result, the appeal is allowed in part reducing the quantum of compensation from Rs.5,57,000/- to Rs.4,55,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realization. The respondent Nos.1 and 2 shall jointly and severally deposit the same within a period of two months from the date of receipt of a copy of this judgment. Miscellaneous petitions, if any pending in this miscellaneous appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 18.3.2015
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[1] 2004 (4) ALD 883 (DB)

[2] (2009) 6 SCC 121

[3] 2014 ACJ 1430

[4] (2013) 7 SCC 62

[5] 2014 ACJ 2873