IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

****

MACMA No.1925 of 2009

Between:

The Bajaj Allianz General Insurance Company Limited
..Appellant

And

Ramavat Laxmi and another ..
Respondents

DATE OF JUDGMENT PRONOUNCED: **19.08.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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 Reporters / Journals? Yes / No
3. Whether Their Lordship wish to see the fair copy of the Judgment? Yes / No

* THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

+ MACMA No.1925 of 2009

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The Bajaj Allianz General Insurance

Company Limited ....

Appellant

And

Ramavat Laxmi and another ...

Respondents

! Counsel for Appellant : Smt. Jayanthi

S.C.Sekhar

^ Counsel for Respondent No.1 : Sri Kota Subba Rao

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> Head Note:

? Cases referred:

1) AIR 2004 SC 1531

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1925 of 2009

JUDGMENT:

Aggrieved by the Award dated 21.08.2008 in O.P.No.1695 of 2006 passed by the Chairman, M.A.C.T-cum-XXIII Additional Chief Judge, Hyderabad (for short “Tribunal”), the second respondent—Bajaj Alliance General Insurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) On 04.06.2006 the claimant was travelling as passenger in auto rickshaw bearing No. AP 23 U 3100 along with other passengers to go to Rajabollarum tanda and when it reached near weaker section colony of Kistapur, the driver of Auto rickshaw drove the same in a rash and negligent manner at high speed and dashed one Hero Honda, which was coming in the opposite direction. In the resultant accident, the claimant sustained grievous injuries and lost vision of right eye. It is averred that the accident was occurred due to the rash and negligent driving of the crime vehicle. On these pleas, the claimant filed O.P.No.1695 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short “the Act”) against respondents 1 and 2, who are the owner and insurer of the auto and claimed Rs.5,00,000/- as compensation.

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

c) R2/Insurance Company filed counter denying all the material averments made in the petition and urged to put the claimant in strict proof of the same. It is averred that the accident was occurred due to rash and negligent driving by the driver of Hero Honda. R2 further contended that compensation claimed is excessive and exorbitant and prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A17 and Exs.X.1 and X.2 were marked on behalf of claimant. Rw.1 and 2 were examined and Exs. B.1 and B.2 were marked on behalf of respondents.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.4,00,000/- with costs and interest at 7.5% p.a. against respondent Nos.1 and 2.

Hence, the appeal.

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

4) Heard arguments of Smt. Jayanthi S.C. Sekhar, learned counsel for appellant/Insurance Company and Sri K o t a Subba Rao, learned counsel for respondent No.1/claimant. Notice sent to R2/owner of auto was returned as unserved.

5) Opposing the award fastening liability on the Insurance Company, learned counsel for appellant mainly contended that driver at the relevant time of accident had possessed licence to drive only Light Motor Vehicle (non-transport) type of vehicle but the vehicle in question being an auto which is a transport vehicle, the driver cannot drive the same as he

had no valid and effective driving licence to drive the type of vehicle involved in the accident and the owner had knowingly allowed the driver to drive such vehicle but the Tribunal on an erroneous appreciation of facts, evidence and law held as if driver possessed valid driving licence and fastened liability on the Insurance Company and learned counsel thus prayed to allow the appeal.

6) Per contra, learned counsel for 1st respondent/claimant supports the award and submitted that Tribunal had rightly held driver had valid driving licence and there is no need to review the said finding and thus prayed to dismiss the appeal.

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

"Whether the award of the Tribunal fastening liability on the appellant/Insurance Company is factually and legally correct?

8) **POINT**: On a careful analysis of facts, evidence and law I find force in the submission of learned counsel for appellant/Insurance Company. The evidence of RW2 coupled with Ex.X1 driving licence extract would show that the driver had following driving licence:

LMV	Non-Transport	20.08.2003	19.08.2023

a) The accident in this case was occurred on 04.06.2006. Therefore, it is clear that the driver possessed driving licence to drive Light Motor Vehicle (LMV) of non-transport type by the date of accident. The vehicle involved in this accident is an auto which is no doubt LMV but a transport type of vehicle. Therefore, it is evident that driver was not having valid driving licence to drive a LMV of transport type of vehicle by the date of accident. At this juncture, it is useful to refer SO 1248(E) dated 05.11.2004 whereunder the Central Government classified 'transport' and 'non-transport vehicles' as per which "*three wheeled vehicle for transport of passengers/goods*" is regarded as a transport vehicle. By this classification also it is clear that the driver was not authorized to drive a LMV transport type of vehicle since he possessed driving licence to drive only LMV of non-transport type of vehicle by the relevant time of accident. Hence, there is a violation of terms of policy. Coming to the judgment of Apex Court in ***National Insurance Company Limited v. Annappa Irappa Nesaria***[1] what was observed by the Apex Court in that decision is that a "Light Motor Vehicle" takes within its umbrage, both a transport vehicle and a non-transport vehicle. It further observed that a driver who had valid driving licence to drive a Light Motor Vehicle, therefore, was authorized to drive a light goods vehicle as well. Thus, the observation of Honourable Apex Court is that a Light Motor Vehicle includes both a transport and a non-transport vehicle. There is no demur in it. In that case, it appears, the driving licence of the concerned driver only revealed as Light Motor Vehicle without limiting the said driving licence to either transport or non-transport type of vehicles. Since a

Light Motor Vehicle includes both transport and non-transport type vehicles, it was held he was having valid driving licence in that case. However, in the instant case the facts are different. The driver was authorized to drive Light Motor Vehicle but his licence is specifically limited to non-transport type of vehicles only. So, he cannot take advantage from the above judgment of Apex Court. Therefore, the trial Court was not right in fastening full liability on the Insurance Company. However, as in the instant case, the policy was in force by the date of accident and risk of claimant was covered under the policy but the only violation is relating to driving licence issue, going by the principle laid down by the Apex Court in ***National Insurance Company Limited v. Swaran Singh***[2] it can be held that Insurance Company should pay compensation and then recover from the insured/owner.

9) In the result, this MACMA is partly allowed and ordered that the appellant/Insurance Company shall at first pay the compensation awarded by the Tribunal and then recover the same from the insured/owner of the auto. No costs in the appeal.

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

U.DURGA PRASAD RAO, J

Date: 19.08.2015

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[1] 2008 ACJ 721 (SC)

[2] AIR 2004 SC 1531