HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.2868 OF 2009

JUDGMENT:

This appeal is filed by the second respondent-insurance company challenging the judgment and award dated 01.8.2007 passed in O.P. No.752 of 2005 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad, wherein and whereby the Tribunal while awarding an amount of Rs.96,100/- towards compensation as against the claim of Rs.2,00,000/- to the petitioner fastened the liability on the insurance company.

2. The parties hereinafter will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The facts leading to filing of the present petition are briefly as follows: On 19.10.2004 the petitioner and her family members were proceeding to Mantralayam from Kanipakam in Maruti Car bearing No.AP 9S 2196. When the car reached near Urdu School Sanitorium, Madanapalle, the driver of the Jeep bearing No.AP 20U 8839 had driven the same in a rash and negligent manner and dashed against the car. The accident occurred due to rash and negligent driving of the driver of the jeep against whom the Station House Officer, Madanapalle Police Station registered a case in Crime No.170 of 2004. Due to the accident, the petitioner sustained grievous injuries on various parts of the body including fracture of right leg. The inmates of the car also sustained multiple injuries. The petitioner underwent operation to right leg. The jeep, which belongs to the first respondent, was insured with second respondent-insurance company with effect from 09.10.2004 to 08.10.2005. Hence, the petition claiming a compensation of Rs.2,00,000/- with interest and costs.

4. The first respondent remained ex parte. The second respondent filed counter denying all the material averments made in the petition inter alia contending that the accident occurred due to rash and negligent driving of the car by B.Jaganmohan, husband of the petitioner, and there was no negligence on the part of the driver of the jeep. The first respondent entrusted the jeep to its driver knowing fully well that he was not having valid and effective driving licence as on the date of the accident, thereby the first respondent violated the terms and conditions of the policy. Therefore, there is no statutory obligation on the part of the second respondent to indemnify the liability of the first respondent. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence the petition may be dismissed.

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

1) Whether the accident occurred on 19.10.2004 at about 09.45 p.m., due to rash and negligent driving of the Jeep bearing No.AP 20U 8839 by its driver causing permanent disability to the petitioner?
2) Whether the petitioner is entitled to compensation and if so, to what amount and from which of the respondents?
3) To what relief?

6. The Tribunal clubbed O.P.No.752 of 2005 with O.P.Nos.746 and 753 of 2005 arose out of the same accident and recorded the evidence in O.P.No.746 of 2005. On behalf of the petitioner, P.Ws.1 to 9 were examined and Exs.A1 to A26 and Exs.X1 to X6 were marked. On behalf of the second respondent, R.W.1 was examined and Exs.B1 to B3 were marked.

7. On appraising the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident was occurred due to the rash and negligent driving of the driver of the jeep

bearing No.AP 20U 8839 and allowed the petition in part by awarding compensation of Rs.96,100/- with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of realisation, directing the respondent Nos.1 and 2 jointly and severally to deposit the amount within 30 days. Feeling aggrieved by the judgment and award, the second respondent – insurance company preferred the appeal.

8. Sri T.Ramulu, learned standing counsel for the appellant-insurance company submitted that the Tribunal failed to consider that B.Jaganmohan, husband of the petitioner, who drove the car, was also equally responsible to cause the accident. He further submitted that the Tribunal failed to appreciate that the driver of the jeep was not having valid and effective driving licence and erroneously fastened the liability on the second respondent. He also submitted that the amount of compensation awarded under various heads is on higher side.

9. ***Per contra***, Sri Pasham Krishna Reddy, learned counsel for the claimant submitted that the quantum of compensation awarded by the Tribunal under various heads is just and reasonable.

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

> (1) *Whether there was any negligence on the part of B.Jaganmohan, husband of the petitioner, to cause the accident? If so, to what extent he was responsible?*
>
> (2) *Whether the Tribunal has awarded just and reasonable compensation to the petitioner or not?*
>
> (3) *Whether the first respondent violated the terms and conditions of the policy so as to absolve the liability of second respondent-insurance company?*

<u>Point No.1</u>:

11. In order to prove the manner of accident, the petitioner examined herself as P.W.1 and got marked Exs.A1 to A4. Petitioner's mother-in-law was examined as P.W.2. As seen from the testimony of P.Ws.1

and 2, the driver of the jeep had driven the same in a rash and negligent manner and hit the car of the petitioner. As per the recitals of Exs.A1 and A2, certified copies of F.I.R. and charge sheet, the accident occurred due to the rash and negligent driving of the jeep by its driver. In the cross-examination of P.Ws.1 and 2, nothing was elicited to shake their testimony so far as the manner of accident is concerned. As per the testimony of R.W.1, the accident occurred due to rash and negligent driving of the car by B.Jaganmohan. Admittedly, R.W.1 is not an eye witness to the accident. R.W.1 being employee of the insurance company, the possibility of distortion of the facts in order to avoid payment of compensation to the petitioner cannot be ruled out. The oral testimony of R.W.1 is no way helpful to the second respondent to prove the negligence if any on the part of B.Jaganmohan. If really the accident took place as pleaded by the second respondent what prevented the driver of the jeep to inform the Police about the manner of the accident. For one reason or the other, the second respondent did not examine the driver of the jeep or any other person witnessed the accident to substantiate the stand taken by it. The oral testimony of R.W.1 is not supported by documentary evidence. The oral testimony of P.Ws.1 and 2 is fully supported by the recitals of Ex.A1 and A2, certified copies of F.I.R and charge sheet. The predominant contention of the learned counsel for the second respondent is that B.Jaganmohan was also equally responsible to cause the accident.

12. In ***Syed Sadiq Vs. Divisional Manager, United India Assurance Company***[1] the Hon'ble apex Court at para No.28 held as follows:

> 28. The High Court without assigning any reason concurred with the findings of the Tribunal with respect to contributory negligence. We find it pertinent to observe that both the Tribunal and the High Court erred in holding the

> appellants/ claimants in these appeals liable for contributory negligence. The Tribunal arrived at the above conclusion only on the basis of the fact that the accident took place in the middle of the road in the absence of any evidence to prove the same. Therefore, we are inclined to hold that the contribution of the appellants/claimants in the accident is not proved by the respondents by producing evidence and therefore, the finding of the Tribunal regarding contributory negligence, which has been upheld by the High Court, is set aside.

13. In ***Meera Devi Vs. Himachal Pradesh Road Transport Corporation***[2] the Hon'ble apex Court at para No.10 held as follows:

> 10. To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident has taken place due to rash and negligent driving of the deceased scooterist. In the absence of any cogent evidence to prove the plea of contributory negligence, the said doctrine of common law cannot be applied in the present case. We are, thus, of the view that the reasoning given by the High Court has no basis and the compensation awarded by the Tribunal was just and reasonable in the facts and circumstances of the case.

14. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the jeep bearing No.AP 20U 8839. As observed earlier, the second respondent failed to adduce evidence to substantiate its contention. I am fully agreeing with the findings recorded by the Tribunal on issue No.1. I am unable to countenance the submission made by the learned counsel for the second respondent with regard to contributory negligence if any on the part of B.Jaganmohan. Hence, point No.1 is answered in favour of the claimant and against the second respondent-insurance company.

Point No.2:

15. After taking into consideration the oral and documentary evidence available on record, the Tribunal awarded compensation under the following heads:

Rs.

1.	Fracture dislocation	:	30,000
2.	Multiple abrasions on 8 places	:	15,000
3.	Ex.X1 bill (P.W.4)	:	31,110
4.	Pain and suffering	:	10,000
5.	Loss of amenities	:	5,000
6.	Nutritious food, transport and assistance	:	5,000
	Total	:	96,100

As seen from the testimony of P.W.1, she sustained fractures on various parts of the body. To prove the nature of the injuries, P.W.4 was examined. As per the testimony of P.W.4, the petitioner sustained fracture to right femur. The petitioner was admitted in the hospital on 20.10.2004 and discharged on 28.11.2004. As per the testimony of P.W.4, the petitioner underwent operation on 21.10.2004. Exs.X4 to X6 are the case sheets.

16. A perusal of the record clearly reveals that the petitioner sustained fracture and other injuries on various parts of the body and took treatment as inpatient for a long time. Due to the fracture and other injuries, the petitioner might have suffered a lot. Taking into consideration the nature of injuries sustained by the petitioner, the Tribunal awarded an amount of Rs.55,000/- under different heads towards pain and suffering. The petitioner might have spent huge amount towards medical bills. Therefore, the Tribunal rightly awarded Rs.31,110/- towards medical expenses basing on the bills produced by the petitioner. The Tribunal awarded an amount of Rs.5,000/- towards loss of amenities and Rs.5,000/- towards nutritious food, transport and assistance. A perusal of the record clearly reveals that after taking into consideration oral, documentary evidence produced

by the petitioner, the Tribunal awarded the compensation. Viewed from any angle, the quantum of compensation awarded by the Tribunal is not on higher side. On the other hand, the Tribunal has awarded just and reasonable compensation. There are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal so far as the quantum of compensation is concerned.

Point No.3:

17. The oral testimony of R.W.1 coupled with Ex.B1 reveals that the driver of the jeep was having driving licence to drive Light Motor Vehicle (LMV) – non transport as on the date of the accident. A perusal of Ex.B3 reveals that the driver of the jeep had obtained licence to drive LMV-transport with effect from 22.3.2005. It is not in dispute that the crime vehicle is an LMV. The fact remains that the driver of the crime vehicle was having licence to drive LMV non-transport. The crucial question for consideration at this juncture is whether driving of light motor vehicle – transport by a driver having licence to drive light motor vehicle non – transport amounts to fundamental breach of terms and conditions of the policy so as to absolve the liability of the insurer?

18. To resolve the issue, this court is placing reliance on the following decisions:

In ***S.Iyyapan Vs. United India Insurance Co.***[3] 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***[4] 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."

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.

19. 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, this Court is of the view that the owner of the jeep has not violated the terms and conditions of the policy so as to absolve the liability of the insurance company or to enable the insurer to recover the amount of compensation from the insured, after satisfying the award passed by the Tribunal. Accordingly, this point is answered against the insurance company. The appeal is devoid of merits.

20. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 24.02.2015
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[1] 2014 (2) ALD 133 (SC)

[2] (2014) 4 SCC 511

[3] (2013) 7 SCC 62

[4] 2014 ACJ 2873