

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

+ M.A.C.M.A No.1926 of 2010

%19.01.2015

Between:

Karri Krishna Mohan.
Appellant

....

AND

Kuppili Gaddemma

and another.

....

Respondents

**! Counsel for Appellant
Naidu**

: Sri G. Surapu

**^ Counsel for Respondent No.1
Lokanadham**

: Sri Umasankar

^ Counsel for Respondent No.2

: Sri Kota Subba Rao

< Gist:

> Head Note:

? Cases referred:

- 1) AIR 2004 SC 1531 = (2004) 3 SCC 297
- 2) (2013) 7 SCC 62
- 3) (2007) 10 SCC 643
- 4) 2008 ACJ 2161 (SC)
- 5) AIR 2009 SC 2151

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1926 of 2010

JUDGMENT:

Aggrieved by the Award dated 17.08.2010 in M.V.O.P.No.290 of 2009 passed by the Chairman, M.A.C.T-cum-Principal District Judge, Srikakulam (for short “the Tribunal”), the owner preferred the instant MACMA.

2 a) On factual side, on 08.03.2009 at about 8.30 PM when the deceased—Uppada Appayya and another by name Polumata Durgayya were returning to their house after purchasing some items, a car bearing No.AP 31 X 5622 being driven by its driver in a rash and negligent manner and at high speed dashed against them. In the resultant accident, the deceased succumbed to injuries. It is averred that car driver was at fault. On these pleas, the claimant who is the younger sister of deceased, filed M.V.O.P.No.290 of 2009 under Section 166 of M.V.Act against respondents 1 and 2, who are the owner and insurer of the crime car and claimed Rs.1,50,000/- as compensation.

b) Respondent No.1/owner opposed the claim and contended that driver of the car was having valid driving licence at the time of accident and policy was in force and hence he was not liable to pay the compensation to the petitioner.

c) R2/Insurance Company filed counter contending that driver of the crime vehicle was not having valid and effective

driving licence to drive the car and the owner knowing fully well the said fact allowed him to drive the vehicle and thereby violated the terms of policy and hence R2 was not liable to indemnify the owner and thus prayed to dismiss the petition.

d) During trial, PW1 was examined and Exs.A1 to A5 were marked on behalf of claimant. RWs.1 and 2 were examined and Exs.B1 and B2 were marked on behalf of respondents.

e) The Tribunal on appreciation of oral and documentary evidence has awarded a sum of Rs.90,000/- with interest at 7.5% p.a against R1/owner while dismissing the petition against the Insurance Company under different heads as follows:

Loss of dependency	Rs. 80,000-00
Loss of estate	Rs. 5,000-00
Funeral expenses	Rs. 5,000-00

Total	Rs. 90,000-00

Hence the appeal by owner.

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

4) Heard arguments of Sri G.Surapu Naidu, learned counsel for appellant/ owner, Sri Umasankar Lokanadham, learned counsel for R1/claimant and Sri Kota Subba Rao, learned counsel for R2/Insurance Company.

5 a) Impugning the award, learned counsel for appellant/R1 firstly contended that the Tribunal erred in fixing the entire

liability on first respondent alone on the ground that the driver of the car had no licence to drive transport vehicle and the appellant/first respondent violated the terms of Ex.B1—policy. Learned counsel argued that merely because driver did not possess driving licence to drive transport vehicle, on that ground alone the Tribunal ought not to have exempted the Insurance Company from liability. On the other hand, going by the principles laid down by the Apex Court in ***National Insurance Company Limited v. Swaran Singh***^[1] and followed in subsequent decisions, the Tribunal ought to have verified whether the owner willfully committed any breach of terms of policy and whether the lack of driving licence to drive transport vehicle was the fundamental cause for the accident or not. He submitted that the appellant who is the owner of the vehicle, did not know about the lack of transport driving licence and further such lacking of the transport driving licence was not the root cause or fundamental cause for the accident, since the driver was not altogether lacking driving licence to drive the vehicle. Even as per Ex.B2—driving licence he was holding driving licence to drive LMV i.e. non-transport vehicle which would show that it was not the case of his not holding due licence or was disqualified from holding licence. Having regard to these facts, learned counsel argued, the Tribunal ought to have fixed liability on the Insurance Company also or at least ought to have directed to pay compensation and recover from the owner. On this aspect he mainly relied upon the decision of

the Apex Court reported in ***S.Iyyapan v. United India Insurance Company Limited and another***^[2].

b) Secondly, learned counsel argued that claimant was the sister of deceased and she was not his dependant and as such, she does not deserve any compensation. In this regard he relied upon the decision reported in ***Manjuri Bera v. Oriental Insurance Company Limited and another***^[3].

6) Per contra, learned counsel for R2/Insurance Company submitted that admittedly the driver had no valid driving licence to drive the transport vehicle and therefore, the Tribunal rightly exonerated the Insurance Company and hence there is no need to review the said finding. He relied upon the following decisions reported in:

i) ***New India Assurance Company Limited v. Roshanben Rahemansha Fakir and another***^[4].

ii) ***Oriental Insurance Co. Ltd vs. Angad Kol and others***^[5]

7) Learned counsel for R1/claimant argued that the Tribunal ought to have fixed responsibility on the Insurance Company also.

8) In the light of above rival arguments, the points that emerge for determination in this appeal are:

1) *Whether the Tribunal was right in exonerating Insurance Company from liability?*

2) *Whether the claimant being the sister of deceased is*

entitled to compensation?

3) *To what relief?*

9) **POINT No.1:** Accident, involvement of Ambassador Car bearing No.AP 31 X 5622 and death of deceased are not in dispute. The evidence of RWs.1 and 2 coupled with Ex.B2—licence particulars of the car driver would show that he was issued licence to drive light motor vehicle of non-transport type for the period from 23.11.2006 to 22.11.2026, whereas the crime vehicle being Ambassador car is a transport vehicle. In this backdrop, the point is whether the Insurance Company can be totally exempted from the liability. The answer is emphatic ‘no’ in the light of the observations of Apex Court in the case of ***Swaran Singh*** (1 supra).

In that case, the Apex Court was dealing with wide spectrum of defence pleas of Insurance Companies basing on the deficiencies in driving licences. Such deficiencies are:

- i) Fake driving licenses of the driver.
- ii) Driver not having licence whatsoever.
- iii) No renewal of driving licence as on the date of accident.
- iv) License granted for one class or description of vehicle but vehicle involved in accident was of different class or description.
- v) Driver holding only a learner’s licence.

The Apex Court after discussing various issues involved in this regard, held that an Insurance Company in order to

succeed in its defence pleas touching the driving licence issues must:

- a) Firstly establish that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant time.
- b) Secondly, the breach which was committed by the insured was so fundamental as is found to have contributed to the cause of the accident.

Even upon establishing the above conditions by the Insurance Company, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal.

I) In ***S.Iyyapan***'s case (2 supra) also similar view was expressed by the Supreme Court. It was held thus:

“Hence, in our considered opinion, the insurer cannot disown its liability on the ground that 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.”

II) In ***Roshanben Rahemansha Fakir***'s case (4 supra) cited by R.2/ Insurance Company also, the Apex Court while

observing that the driver had no transport driving licence, still ordered to pay and recover but ofcourse under Article 142 of the Constitution of India.

III) In **Angad Kol's** case (5 supra) also, while holding that the driver had no valid and effective driving licence for goods vehicle, the Apex Court ordered Insurance Company to pay and recover compensation under Article 142 of the Constitution of India.

IV) In view of the above precedential jurisprudence, the Insurance Company cannot be automatically exonerated merely because of the difference in the type of licence held by the driver. the Insurance Company shall establish that the owner has willfully committed breach of the terms of the policy and further the defect in the driving licence is the fundamental cause for the accident. Inspite of establishing this fact, still the Tribunal can direct the Insurance Company to pay compensation and recover from the owner. In the instant case, the Insurance Company could not establish that the owner willfully committed breach of the terms of the policy and non-possession of transport driving licence was the fundamental cause for the accident. It must be noted that driver was not altogether disqualified from holding the licence. So in these circumstances, the Tribunal instead of exempting the Insurance Company ought to have ordered pay and recover. Hence, such a direction is required in this appeal. This point is

answered accordingly.

10) **POINT No.2:** The contention of appellant is that the claimant being the sister of the deceased is not his dependant and hence does not deserve compensation. It must be said that this argument does not hold water either on facts or on law. On factual side, it is the case of claimant that she is the own sister of the deceased and that the deceased had no wife and children and he was a dumb person and similarly the claimant is also not having husband and children and therefore, both of them were interdependent on each other. This fact is not controverted by the respondent in the O.P. As such, it is clear that the claimant is dependant as well as legal representative of the deceased and hence she deserves compensation. Even the decision cited by the appellant in ***Manjuri Bera's*** case (3 supra) reveals that the liability under Section 140 of M.V. Act does not arise because of lack of dependency. In that case, a claim petition was filed under Section 140 of M.V. Act by the married daughter of the deceased. Thus it is clear that dependency is not a sole factor for awarding compensation under M.V. Act. In the instant case, the claimant besides being the legal representative of the deceased, is dependant too.

11) **POINT No.3:** In the result, this MACMA is partly allowed and ordered as follows:

a) While confirming the compensation awarded by the

Tribunal, the Insurance Company/2nd respondent in the O.P is directed to pay compensation and recover the same from the owner/Insured.

- b) Pending appeal, if the appellant/insured already deposited part of the compensation, the Insurance Company shall pay the remaining part of the compensation only.
- c) No costs in the appeal.

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

U.DURGA PRASAD RAO, J

Date: 19.01.2015

Note: L.R. copy to be marked: Yes/No

Murthy / scs

[\[1\]](#) AIR 2004 SC 1531 = (2004) 3 SCC 297

[\[2\]](#) (2013) 7 SCC 62

[\[3\]](#) (2007) 10 SCC 643

[\[4\]](#) 2008 ACJ 2161 (SC)

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