THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.4285 of 2012

JUDGMENT:

Aggrieved by the Award dated 28.08.2007 in MVOP No.7 of 2005 passed by the Chairman, M.A.C.T-cum- III Addl. District Judge, Kurnool at Nandyal (for short “the Tribunal”), the Insurance Company preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of claimant is that on 29.04.2004 at about 5.00am, the claimant along with his wife, children and mother started in an Indica Car Bearing No. AP 21 H 5681 from Peddakottala village and on the way near Reddypalle Cheruvu Katta of Pullampeta Mandal on Kodur-Rajampet high way, a Tempo Eicher bearing No.AP 04 U 5662 being driven by its driver in a rash and negligent manner came in opposite direction and dashed against the Car. Thereby, the claimant and other passengers sustained grievous injuries. It is averred that Tempo Eicher driver was responsible for the accident and because of the accident, the claimant incurred Rs.2,00,000/- as medical expenses. On these pleas, the claimant, filed M.V.O.P.No.7 of 2005 under Sections 166 of Motor Vehicles Act, 1988 (for short “M.V Act”) against respondent Nos. 1 and 2, who are the owner and insurer of the Tempo Eicher and claimed Rs.6,00,000/- as compensation.

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

c) Respondent No.2 filed Counter denying all material averments and urged to put the claimant in strict proof. It contended that the accident was occurred due to the negligence of the driver of Indica Car and the said driver and also the driver of van had no valid and effective driving license at the time of accident and hence the insurer is not liable to pay any compensation. It further contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

d) Common evidence was adduced in this O.P and other connected O.Ps. On behalf of petitioners in all the O.Ps, PWs.1 to 4 were examined and Exs.A.1 to A.16 and Exs.X1 to X.5 were marked. On behalf of respondents, RWs.1 to 4 were examined and Exs.B.1 and B.2 were marked.

e) The Tribunal, on appreciation of oral and documentary evidence, has awarded a sum of Rs.3,68,887/- with costs and interest at 7.5% p.a under different heads as follows and directed Insurance Company to pay and recover the amount from insured:

Loss of future income Rs.2,88,000-00

Loss of earnings for 21 days Rs. 2,100-00

Medical expenses Rs. 78,787-00

Total Rs. 3,68,887-00

Hence, the appeal by Insurance Company.

3) Heard arguments of Smt.S.A.V.Ratnam, learned counsel for appellant/Insurance Company and Sri B.S.Reddy, learned counsel for respondent No.1/claimant. Case against R.2 was dismissed for default vide Court Order dt:13.09.2011. Since R.2 remained *exparte* and suffered decree before the Tribunal, his absence in this appeal is not a consequence in view of decision reported in ***Meka Chakra Rao vs. Yelubandi Babu Rao @ Reddemma and others*.**

4) The parties in this appeal are referred as they are arrayed before the lower Tribunal.

5 a) Opposing the award, learned counsel for appellant/Insurance Company firstly argued that the Tribunal erred in directing the Insurance Company to pay and recover the compensation amount from the insured in spite of the fact that both the vehicles had head on collision indicating both drivers were equally at fault and further, the driver had no valid and effective driving licence and the

owner/insured thereby committed breach of terms of the policy. Learned counsel submitted that in such an event the Tribunal ought to have exonerated the Insurance Company from its liability. She relied upon the decision reported in ***Sardari and others Vs. Sushil Kumar and others***.

b) Secondly, learned counsel argued that the compensation awarded was excessive inasmuch as the Tribunal erred in fixing the monthly income of the claimant as Rs.4,000/- instead of Rs.3,000/-. It also erred in taking the disability of the claimant at 40% though there was no cogent evidence in that regard.

Learned counsel thus prayed at the first instance to exonerate the Insurance Company and alternatively to reduce the compensation suitably.

6) Per contra, while supporting the award, learned counsel for 1st respondent/claimant argued that since the driver possessed a valid driving licence but of a different type of vehicle and as the claim relates to third party and policy was in force, the Tribunal rightly directed the Insurance Company to pay and recover compensation. He further argued that the compensation awarded under different heads was just and reasonable in the light of fact that the claimant suffered 40% disability in his left lower limb. He thus, prayed to dismiss the appeal

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

"Whether the award passed by the Tribunal is factually and legally sustainable?"

8) **<u>POINT</u>**: The accident, involvement of the car bearing No.AP 21 H 5681 and van bearing No.AP 04 U 5662 and the claimant suffering injuries are all admitted facts.

a) The first contention of the appellant is that the Tribunal ought to have totally exonerated the Insurance Company in view of the fact that the driver of the crime van had no valid and effective licence. In this context, a perusal of the evidence shows that the accident was occurred due to the fault of driver of the tempo Eicher AP 04 V 5662 namely P.Krishnamraju. The evidence of PW.1 was that at the time of accident he was driving his car on the extreme left side of the road, but the van driver went on wrong direction in a rash and negligent manner and dashed the car. Though he was extensively cross examined, nothing useful could be extracted to impeach the credibility of his evidence. Apart from his oral evidence Ex.A.9—charge sheet would also show that the police after investigation, found fault with the driver of the van and charge sheeted him. Neither the Insurance Company nor the owner has adduced any contra evidence to prove the innocence of the van driver. Hence, they cannot now contend that it was a head on collision and the car driver was also equally responsible for the accident.

9) Now coming to the main argument of appellant/Insurance Company, Ex.B.2—driving licence extract shows that the driver P.Krishnamraju holds licence to drive LMV(transport) for the period from 10.05.1988 to 24.02.2008. So far as the crime vehicle is concerned, it is a tempo Eicher and transport goods vehicle. It is a medium goods vehicle. Whereas the driver possessed licence to drive only Light Motor Vehicle (Transport). Hence, it is clear that the driver was not authorized to drive the type of vehicle involved in the accident. Hence, the point is whether on this count, the Insurance Company can be totally exonerated from the liability. In ***S.Iyyappan***'s case(1 supra), in similar circumstances when the driver held licence to drive light motor vehicle but drove a commercial vehicle, the Apex Court taking into consideration that the policy was in force and the claim was of a third party, directed the Insurance Company to pay compensation and then recover the amount from the insured. The ratio in that case squarely applies to the instant case because, in this case also the claim is that of a third party and the policy was in force. It may be noted that the Tribunal in fact relied upon another decision of the Apex Court in ***National Insurance Company Limited vs.***

Kusumrai and others and held that the Insurance Company shall at first pay compensation and then recover from the insured. I find no illegality or irregularity in the said finding. The decision in ***Sardari***'s case (2 supra) relied upon by the appellant can be distinguished on facts. In that case the deceased while driving his Tonga met with an accident when his Tonga was collided with a tractor. In the resultant claim petition, the Insurance Company took the plea that driver of the tractor did not hold a valid and effective licence. Before the Tribunal, the driver of the tractor namely Susheel Kumar was examined, who categorically stated that he did not know how to drive the tractor and he never even tried to learn the driving of the tractor and admitted that he had not possessed any valid driving licence to drive the tractor and he never applied for the licence. The lower Tribunal dismissed the claim application. In the appeal, the High Court awarded compensation against respondents 1 and 2, who were the driver and owner of the vehicle. The appeal carried out by the claimants was dismissed by the Apex Court. The said decision will not come to the aid of the present appellant, because in that case admittedly driver did not hold any type of licence and he admitted the said fact before the Court. However in the instant case, the driver had a valid driving licence, but of a different type. Therefore, the Tribunal rightly gave a pay and recovery direction.

10) So far as the other argument of Insurance Company about the alleged excessiveness of the compensation is concerned, I find no merit in it too. As a result of the accident, the claimant suffered injuries and 40% disability as put in by PW2—the Assistant Professor in G.G.H, Kurnool and consultant in Kalyani Hospital. He deposed that the claimant was admitted in Kalyani Hospital, Kurnool and this witness examined and found that he sustained fracture acetabulum with dislocation of left hip joint with sciatic nerve palsy. He also suffered fracture ribs. PW2 further stated that the patient was treated conservatively with below knee, pin traction. Regarding the condition of PW.1, the doctor stated that at present the patient is having left foot drop with limp in left lower limb and secondary arthritis in left hip joint.

He also stated that the patient required a further surgery in his left foot and left hip joint. He has stated that even after further surgery the patient may not regain full power in the left lower limb and cannot participate in agricultural work. Having regard to his condition, PW2 certified that the claimant suffered 40% permanent disability. Having regard to his condition, the Tribunal rightly accepted 40% disability and accordingly computed compensation which by no means can be said to be excessive or exorbitant. Hence, I find no merits in the appeal.

11) In the result, this M.A.C.M.A filed by the Insurance Company is dismissed by confirming the Award dated 28.08.2007 in MVOP No.7 of 2005 passed by the Tribunal. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 13.11.2015

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