

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

M.A.C.M.A.No.1931 of 2006

JUDGMENT:

The second respondent – National Insurance Company Limited in M.V.O.P.No.553 of 2003 is the appellant. Aggrieved by the order dated 05.05.2006 passed by the Chairman Motor Accidents Claims Tribunal – cum- III Additional District Judge, Kurnool at Nandyal, whereby and whereunder a sum of Rs.1.00 lakh was granted as compensation which amount was sought by the petitioners, under Sections 166 and 140 of the Motor Vehicles Act, the instant appeal is preferred by the appellant.

For convenience sake, the parties are hereinafter referred to as they were arrayed before the Tribunal in O.P.

Facts, in brief, are that the son of the petitioners viz. Boya Thupakula Vijayudu @ Vijaya Kumar (the deceased) was studying 4th class in Sri Ramakrishna Gurukula Vidyalayam, Mahanandi. On 11.01.2003, when the deceased, along with his mother, was returning on foot from Saibaba Temple in Allinagaram at about 7.30 a.m, an auto bearing No.AP21-U-9792 proceeding from Nandyal to Mahanandi dashed the deceased from behind due to which he sustained head injury and succumbed to injuries. On the cries of the deceased and others, the driver of the auto stopped the vehicle and ran away. The petitioners claiming that the deceased was aged 9 years, studying 4th class and had bright future prospects, sought for a compensation of Rs.1.00 lakh.

The first respondent remained *ex parte*.

The second respondent opposed the claim. A specific

plea was taken in the counter that the driver of the auto did not possess valid driving licence at the time of the accident to drive the transport vehicle and, therefore, sought to dismiss the claim. The Tribunal, basing on the said pleadings, framed the following three issues:

1. Whether the accident occurred due to the rash or negligent driving of auto bearing No.AP21-U-9792 resulting in death of Boya Thupakula Vijayudu @ Vijayakumar?
2. Whether the petitioners are entitled for compensation and if so, to what amount and from which of the respondents?
3. To what relief?

To fix the responsibility for the accident, during enquiry, the Tribunal examined the first petitioner as PW.1; an eye-witness was examined as PW.2; and Exs.A.1 to A.5 were marked in order to substantiate their claim for compensation. On behalf of the second respondent, Sri T.V.Ramana was examined as RW.1; the driving licence of Sri Nayab Rasool was marked as Ex.B.1; and a copy of the insurance policy was marked as Ex.B.2. The Tribunal, on appraisal of the evidence let in by PWs.1 and 2 and RW.1, and in the light of the documentary evidence, Exs.A.1 to A.5 and Ex.B.1, answered the issues in favour of the petitioners. On issue No.2, the Tribunal observing that the driver possessed light motor vehicle driving licence as can be seen from Ex.B.1, and placing reliance on Sri Bhola Das v. National Insurance Company Limited^[1], Lata Wadhwa v. State of Bihar^[2] and Tamilnadu State Transport Corporation Limited v. S.Rajapriya^[3] determined the compensation at Rs.1.00 lakh, and held respondent Nos.1 and 2 jointly and severally liable to pay compensation.

The aforementioned order which is challenged by the respondents in the instant appeal contending in the grounds of appeal that despite the evidence of RW.1 that the driver did not possess valid driving licence, still, went wrong in fastening liability on the Insurance Company as the evidence on record clearly indicates that the driver was possessing light motor vehicle driving licence but the driver did not possess valid driving licence to drive transport vehicle at the relevant time, and the Tribunal ought to have held that the Insurance Company was not liable to pay any compensation and, even if liable to pay any compensation, the Tribunal ought to have directed to pay and recover the same from the insured; and, therefore, allow the instant appeal by setting aside the order under challenge.

Heard Sri S.Agasthya Sharma, Learned Counsel for the appellants, and Sri U.Ramanjaneyulu, Learned Counsel for respondent Nos.1 and 2. Respondent No.3, though, served none appeared for him.

The short controversy in this appeal is whether the driver of the auto was possessing light motor vehicle driving licence; if so, can it be considered as valid driving licence to drive auto that involved in the accident; and whether the evidence of RW.1 is material to fasten the liability on Insurance Company.

The evidence of RW.1 would show that the driver was possessing licence to drive light motor vehicle and he did not possess valid driving licence to drive auto which is a transport vehicle and, therefore, the Insurance Company was not liable to indemnify the first respondent by way of payment of compensation to the petitioners. He was cross-examined by the

learned counsel for the petitioners before the Tribunal but except suggesting that the driving licence possessed by the driver would suffice to drive the auto which was bluntly denied by RW.1 nothing useful is elicited. A perusal of Ex.B.1 shows that the Regional Transport Officer, Nandyal had issued a copy of 'D.L' extract which reflects the name of Sri Nayab Rasool and, against the category, it is mentioned as 'L.M.V. only' valid from 27.12.1993 to 26.12.2013. There are four endorsements made extending validity of the licence period to drive light motor vehicle and transport vehicle.

1. C.No.8559/A4/1994

Authorised to drive LMV Transport Vehicle valid from 23.12.1994 to 22.12.1997 w.e.f. 23.12.1994.

Sd/-xxxxx
Additional Licensing Authority
Nandyal

2. C.No.3164/A4/1995

Issued duplicate D.L. in the place of lost one, w.e.f. 11.07.1995 valid upto 22.12.1997.

Sd/-xxxxx
Additional Licensing Authority
Nandyal

3. C.No.1211/A4/1998

D.L. renewed for Transport vehicle from 11.05.1998 to 10.05.2001.

Sd/-xxxxx
Additional Licensing Authority
Nandyal

4. C.No.2712 /A4/2001

D.L. Renewed for Transport vehicle from 21.07.2001 to 30.07.2004 w.e.f. 31.07.2001.

Sd/-xxxxx
Additional Licensing Authority
Nandyal

The Tribunal, of course, observed in paragraph '8' as follows:

“However, the learned counsel for the second respondent submitted that the driver has no valid and effective driving licence. He submitted that the driver Nayab Rasool, son of Shaik Moulali of Allinagaram who drove the auto bearing No. AP21-U-9792 on 11.01.2003 did not possess any valid and effective driving licence and on the date of accident he possessed licence only for light motor vehicle, but he drove auto as driver who possessed LMV. He further stated that he possessed only LMV and the driver of R1 did not possess valid driving licence, therefore the insurance company is not liable to pay any compensation. However, it is a fact that the driver possessed LMV as can be seen from Ex.B.1. The crux of the point in this case is, according to the respondent counsel that the driver only possessed LMV licence and the driver has no valid and effective driving licence to drive transport vehicle like auto. It is not the case of the respondent that the driver has no valid and effective driving licence. As can be seen from Ex.B.1 and the evidence of RW.1, the driver possessed driving licence to drive light motor vehicle. Mere discrepancy that the driver did not possess any transport vehicle licence and therefore, the insurance company is not liable to pay any compensation, does not stand for scrutiny and reasoning. When put it in simple, on the date of accident, the driver has got effective and valid driving licence to drive light motor vehicle and the driver was only driving auto on the date of accident. Therefore, the contention raised by the learned counsel for the second respondent has no stress to believe, consequently the insurance company is liable to pay compensation provided the remaining aspects are established which will be discussed as a later stage.”

As seen from the record, there is nothing from the side of the second respondent – Insurance Company in summoning the concerned officials from the Regional Transport Authority to contradict the endorsements '3' and '4' made in Ex.B.1. Learned counsel for the Insurance Company, having gone through the

endorsements extracted above, fairly concedes that the driver did possess valid driving licence to drive transport vehicle and he was possessing valid driving licence on the date of accident that was on 11.01.2003 as the expiry period was ending on 30.07.2004 as per the fourth endorsement. In such an event, there are no merits in the instant appeal.

The appeal fails and is, accordingly, dismissed.

Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

A.SHANKAR NARAYANA,J

Date: 26.02.2015
usd

[\[1\]](#) 2005(2) T.A.C. 196 (Cal.)

[\[2\]](#) 2001 ACJ 1735

[\[3\]](#) 2005ACJ 1441