HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.952 of 2009

JUDGMENT:

This appeal is filed by the claimant challenging the judgment and award dated 08.12.2008 passed in M.V.O.P. No.147 of 2005 on the file of the Motor Accidents Claims Tribunal-cum- District Judge, Khammam.

2. The parties will hereinafter be referred to as they are arrayed before the Tribunal for the sake of convenience.

3. The facts leading to filing of the present appeal, in brief, are as follows: On 27.9.2004 the petitioner along with others boarded jeep bearing No.AP 20T 8458 to go to Palair on the occasion of 'Vinayaka Nimajjanam'. When the jeep reached near Kusumanchi Highway road, the driver of the jeep had driven the same in a rash and negligent manner as a result of which the jeep turned turtle. The Station House Officer, Kusumanchi Police Station registered a case in crime No.103 of 2004 under Section 337 IPC against the driver of the jeep. In the accident, the petitioner sustained fracture of 7^{th}, 8^{th} and 9^{th} right ribs, fracture of styloid of ulna and grievous injuries on various parts of the body. Immediately after the accident, the petitioner was shifted to Government Hospital, Khammam, where he took treatment as inpatient from 27.9.2004 to 01.10.2004. He spent huge amount towards medicines and treatment. Due to fracture and injuries, the petitioner could not attend the work for a long time and thereby lost his income. By the time of the accident, the petitioner used to earn Rs.100/- per day by attending coolie work. The jeep which belongs to the first respondent was insured with the second respondent and the third respondent is the erstwhile owner of the jeep. Therefore, the respondent Nos.1 to 3 are jointly and severally liable to pay compensation of Rs.1,00,000/- to the petitioner with interest and costs.

4. The first respondent remained *ex parte*. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that the driver of the jeep was not having valid and effective driving licence as on the date of the accident and therefore, there is no obligation on the part of this respondent to indemnify the liability of the owner of the jeep. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence,

the petition is liable to be dismissed so far as this respondent is concerned.

5. The third respondent filed counter denying the manner of the accident *inter alia* contending that he sold the jeep in question to the first respondent long back. The jeep was insured with the second respondent as on the date of the accident. Therefore, this respondent is no way liable to pay compensation to the petitioner. Hence, the petition may be dismissed against this respondent.

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

1. Whether the accident took place due to rash and negligent driving of the accident vehicle, jeep bearing No.AP 20T 8458 by it's driver?
2. Whether the petitioner is entitled to claim any compensation? If so, to what amount and from which of the respondents?
3. To what relief?

7. During the course of the trial, on behalf of the petitioner, P.W.1 was examined and Exs.A1 to A11 were marked. On behalf of the second respondent, R.W.1 was examined and Exs.B1 to B3 were marked.

8. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the jeep, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.40,375/- with interest at 7.5% per annum from the date of petition till the date of realisation, directing the respondent No.1 to pay the compensation. The petition against the respondent Nos.2 and 3 was dismissed. Feeling aggrieved by the judgment and award, the claimant preferred the present appeal.

9. The contention of Sri Parsa Ananth Nageswar Rao, learned counsel for the appellant is two fold: (1) The amount of compensation awarded by the Tribunal is grossly low; and (2) The Tribunal committed error while not fastening the liability on the second respondent though the driver of the jeep was having valid and effective driving licence as on the date of the accident.

Per contra, Sri Naresh Byrapaneni, learned counsel for the insurance company, submitted that the Tribunal rightly dismissed the petition against the second respondent. He further submitted that there are no grounds much less valid grounds to modify or set aside the judgment and award passed by the Tribunal so far as this respondent is concerned.

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

> *(i) Whether the Tribunal has awarded just and reasonable compensation or not?*
>
> *(ii) Whether the first respondent had violated the terms and conditions of the policy so as to absolve the liability of the second respondent – appellant?*

Point No.1:

11. As per the finding of the Tribunal, on issue No.1, the accident occurred due to rash and negligent driving of the driver of the jeep. The Tribunal has assigned cogent and valid reasons to its finding. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Having regard to the facts and circumstances of the case, this court is of the considered view that the accident occurred due to rash and negligent driving of the driver of the jeep, which resulted in injuries to the petitioner.

12. The oral testimony of P.W.1 coupled with Exs.A3 wound certificate, A4 X-ray report, A8 two X-ray films, A9 Scanning report, A10 report, and A11 Scanning report, reveals that the petitioner sustained fracture to 7^{th}, 8^{th} and 9^{th} right ribs, and fracture to styloid of ulna. The petitioner also sustained grievous injuries. The Tribunal, taking into consideration the oral and documentary evidence available on record, rightly awarded Rs.38,000/- towards pain and suffering, though fracture-wise.

13. The Tribunal basing on the medical bills produced by the petitioner awarded Rs.375/- towards purchase of medicines. Admittedly the petitioner sustained fracture to ribs and ulna. Though the treatment in Government Hospitals is free, the patients have to purchase the medicines and have to spend money towards medical investigations. Therefore, considering the nature of the fractures sustained by the petitioner, I am inclined to award an amount of Rs.4,000/- towards medical expenses instead of Rs.375/- as awarded by the Tribunal.

14. The Tribunal awarded an amount of Rs.2,000/- towards loss of earnings. Due to fractures, the petitioner might not have attended to work for a period of about four months including the treatment period. Hence, I am inclined to award and amount of Rs.12,000/- towards loss of earnings. I am also inclined to award an amount of

Rs.1,000/- towards extra nourishment. The petitioner is entitled to the compensation under the following heads:

		Rs,
1.	Pain and suffering	38,000
2.	Medical expenses	4,000
3.	Loss of earnings	12,000
4.	Extra nourishment	1,000
	TOTAL	55,000

The amount of compensation awarded to the petitioner, under the above heads, is just and reasonable. Accordingly, this point is answered.

<u>Point No.2</u>:

15. The Tribunal dismissed the petition against the second respondent on the ground that the driver of the jeep was not having valid and effective driving licence as on the date of the accident. In para – 17 of the judgment of the Tribunal, it is clearly mentioned that the petitioner has filed memo along with driving licence of the driver of the jeep. The material available on record clearly reveals that the driver of the jeep was having driving licence to drive light motor vehicle (non-transport). It is not in dispute that the jeep is a light motor vehicle. The fact remains that the driver of the jeep had not obtained badge to drive transport vehicle. The skill required to drive transport and non-transport vehicles is one and the same. It is not the case of the second respondent that the proximate cause for causing the accident is non-possessing of the badge by the driver of the jeep. The crucial question that falls for consideration is that mere non-obtaining of transport endorsement on the driving licence would amount to fundamental breach of terms and conditions of the policy.

In ***S.Iyyapan Vs. United India Insurance Co.*** 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,

(*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.

Kulwant Singh Vs. Oriental Insurance Co. Ltd wherein 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.

As per the principle enunciated in the cases cited supra, mere non-obtaining of endorsement on the driving licence by itself would not amount to violation of terms and conditions of policy so as to absolve the liability of the second respondent. The facts of the case on hand are almost identical to the facts of the cases cited supra.

16. 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 vehicle has not violated the terms and conditions of the policy so as to absolve the liability of the insurance company.

17. The first respondent being the owner of the crime vehicle is vicariously liable to the wrongful acts done by his employee. The crime vehicle was insured with the second respondent insurance company as on the date of accident. Hence, the second respondent has to indemnify the liability of the first respondent. Therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

18. In the result, the appeal is allowed in part, enhancing the quantum of compensation from Rs.40,375/- to Rs.55,000/- (Rupees fifty five thousand only). The respondent Nos.1 and 2 are jointly and severally liable to pay the same with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realisation, within a period of two months from the date of this judgment. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 25.3.2015

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