HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.1383 of 2005

J U D G M E N T:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree dated 30.06.2004, passed by the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, Kurnool, in O.P.No.413 of 2002, awarding compensation of Rs.1,65,590/- against the first respondent alone.

2. The appellant/petitioner filed the above Original Petition under Sections 140 & 166 of the Act claiming compensation of Rs.3,00,000/- on account of the injuries sustained by him in a motor vehicle accident that occurred on 07.03.2002.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 07.03.2002 at about 05:00 p.m, while the petitioner was travelling on a tractor bearing No.AP.21T.2265 with paddy trasun from Krishna Reddy paddy fields and when the said tractor was crossing the boundary field of Krishna Reddy, the driver of the said tractor drove the vehicle in a rash and negligent manner and applied sudden brakes. Due to the said act, the petitioner fell down from the tractor and the tractor ran over the petitioners' left hand, as a result the left hand of the petitioner was amputated and he received multiple injuries all over his body. Immediately after the accident, the petitioner was shifted to Government General Hospital, Kurnool, and was treated as inpatient for a period of one month. The petitioner was aged about 25 years, working as a coolie and earning Rs.3,000/- p.m at the time of accident. Due to the accident, the petitioner was unable to do any work. The petitioner spent Rs.30,000/- towards medical and attendant charges. The accident occurred only due

to the rash and negligent driving of the driver of the tractor bearing No.AP.21T.2265, which was owned by the first respondent and insured with the second respondent and thus, both the respondents are jointly and severally liable to pay compensation to the petitioner.

5. The brief averments made in the counter filed by the first respondent are as follows:

The first respondent put the petitioner to prove the manner of accident, his age and income and treatment taken by him in the hospital. He stated that the petitioner was not earning Rs.3,000/- p.m by doing coolie work, but he was earning only Rs.20/- daily by doing coolie work at the time of accident. The tractor bearing No.AP.21T.2265 was insured with the second respondent. The driver of the tractor is no way responsible for the alleged accident. The petitioner did not sustain any injuries in the said accident. Further, there is no negligence on the part of the driver of the tractor for causing the accident. The petitioner was not treated as inpatient for a period of one month in the Government General Hospital, Kurnool for the alleged injuries. The claim of the petitioner is excessive and prayed the Court to dismiss the petition.

6. The brief averments made in the counter filed by the second respondent are as follows:

The second respondent put the petitioner to prove the manner of accident, his age and income and treatment taken by him in the Government Hospital for about one month by spending Rs.30,000/-. The second respondent also put the petitioner to prove that the first respondent is the owner of the tractor and second respondent is the insurer of the vehicle. Due to the negligence of the petitioner the accident occurred, so the petitioner himself is responsible for amputation of his left hand. The second respondent also put the petitioner to prove that the driver of the vehicle was having valid and subsisting driving license at the time of accident. Further, the quantum of compensation claimed by the petitioner is high, excessive and exorbitant. The second respondent contended that even if the policy is proved, the liability of this respondent is subject to the compliance of Section 65VB of the Insurance Act, 1938 and also subject to policy conditions and finally prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate his claim, the petitioner got examined himself as PW.1 and got marked Exs.A.1 to A.4 on his behalf. On behalf of the respondents, RW.1 was got examined and Exs.B1 & B2 got marked.

8. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the tractor bearing No.AP.21T.2265 and awarded compensation of Rs.1,65,590/- along with interest at 9% p.a. to the petitioner against the first respondent, and dismissed the petition against the second respondent.

9. Being aggrieved by the award passed by the Tribunal against the first respondent alone, the petitioner preferred the present appeal.

10. The learned counsel appearing for the appellant/petitioner argued that RW.1 categorically admitted in his evidence that the petitioner is a coolie in the tractor on the date of accident; that the accident occurred due to rash and negligent driving of the driver of the tractor while travelling with the paddy to the agricultural fields; that the Tribunal ought to have granted compensation even against the second respondent, who is the insurer, and also argued that the Tribunal without considering the evidence on record granted meagre compensation and no compensation was awarded towards pain and suffering, extra nourishment and transportation charges and relied upon the case laws reported in ***S.Iyyapan v. United India Insurance Company Limited and another***[1], wherein it is held as follows:

"8. The defence which the insurer is entitled to take in a case for compensation arising out of the motor vehicles accident was provided under Section 96 of the old Act which is now Section 149 of the Act of 1988. Section 149 of the Motor Vehicles Act, 1988 made it mandatory on the part of the insurer to satisfy the judgments and awards against persons insured in respect of third party risk. For better appreciation, Section 149 is reproduced herein below:

> *"**149: Duty of Insurer to satisfy judgments and awards against persons insured in respect of third-party risks:-** (1) If, after a certificate of insurance has been issued under Sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of Section 163A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.*
>
> *(2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:*
>
> *(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:*
>
> *(i) a condition excluding the use of the vehicle-*
>
> *(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or*
>
> *(b) for organised racing and speed testing, or*
>
> *(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or*
>
> *(d) without side-car being attached where the vehicle is a motor cycle; or*
>
> *(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or*
>
> *(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or*
>
> *(b) that the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a*

representation of fact which was false in some material particular.

(3) Where any such judgment as is referred to in Sub-section (1) is obtained from a Court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of Section 13 of the Code of Civil Procedure, 1908 (5 of 1908) conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 1938) and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in Sub-section (1), as if the judgment were given by a Court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in Sub-section (2).

(4) Where a certificate of insurance has been issued under Sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in Clause (b) of Sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under Clause (b) of Sub-section (1) of Section 147, be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this Sub-section shall be recoverable by the insurer from that person.

(5). ....

(6). ....”

Section 149(2)(a)(ii) gives a right to the insurer to take a defence that person driving the vehicle at the time of accident was not duly licensed.

13. In the case of ***New India Assurance Co., Shimla*** *v.* ***Kamla and Ors.*** *[(2001) 4 SCC 342], a fake licence had happened to be renewed by the statutory authorities and the question arose as to whether Insurance Company would be liable to pay compensation in respect of motor accident which occurred while the vehicle was driven by a person holding such a fake licence. Answering the question, this Court discussed the provisions of Sections 146, 147 and 149 of the Act and observed:*

“………..

24. The principle laid down in the said decision has been followed by a three-Judge Bench of this Court with approval in Sohan Lal Passi v. P. Sesh Reddy [(1996) 5 SCC 21].

25. The position can be summed up thus:

The insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third *parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence. Learned Counsel for the insured contended that it is enough if he establishes that he made all due enquiries and believed bona fide that the driver employed by him had a valid driving licence, in which case there was no breach of the policy condition. As we have not decided on that contention it is open to the insured to raise it before the Claims Tribunal. In the present case, if the Insurance Company succeeds in establishing that there was breach of the policy condition, the Claims Tribunal shall direct the insured to pay that amount to the insurer. In default the insurer shall be allowed to recover that amount (which the insurer is directed to pay to the claimant third parties) from the insured person."*

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 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."

and ***Bajaj Allianz General Insurance Co. Ltd., v. Kalaguri Naganna and others***[2], wherein it is held as follows:

> *"From the judgment of the Supreme Court in National Insurance Company Limited v. Swaran Singh [2004 (2) ALD 36 (SC)], it is clear 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 driving 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."*

11. Though notice was served on the first respondent, none appeared to defend on his behalf.

12. The learned counsel appearing for the second respondent argued that the Tribunal after considering the evidence on record rightly held that the driver of the tractor ought not to have permitted the petitioner to sit on the engine of the tractor and thus, the first respondent has violated the terms and conditions of the policy, and as such the second respondent is not liable to pay any compensation to the petitioner and the said fact needs no interference and prayed the Court to dismiss the appeal.

13. Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellant/petitioner is entitled for enhancement of compensation as prayed for?
3. Whether the appellant/petitioner is entitled for compensation against the second respondent as prayed for?

14. **<u>P O I N T S:</u>** A perusal of the oral evidence of PW.1 coupled with

Ex.A1-certified copy of the First Information and Ex.A2-certified copy of the charge sheet, it is proved that the accident occurred on 07.03.2002 was due to rash and negligent driving of the driver of the tractor bearing No.AP.21T.2265, in which the petitioner received injuries. This finding of the Tribunal regarding the manner of accident needs no interference.

15. The learned counsel for appellant/petitioner raised the dispute regarding the fixation of liability only on the owner of the vehicle only, but not the insurer. The learned counsel argued that the petitioner was working with respondent No.1 as a coolie and the accident occurred due to rash and negligent driving of the driver of the first respondent and insurance policy was in force and it was covered for five coolies, therefore prayed the Court to fix the liability against the Insurance Company.

16. On the other hand, the learned counsel appearing for second respondent opposed and stated that the trial Court rightly fixed the liability on the first respondent by exonerating the Insurance Company. A perusal of the evidence shows that on the date of accident, appellant/petitioner has travelled on the tractor engine. This fact was born out even from Ex.A1-copy of the First Information Report. On the date of incident, the driver of the first respondent allowed the petitioner to sit on the tractor engine. Further, there is no trailor attached to the tractor at the time of accident and only it was attached to one thrashing machine, therefore there is no place for anybody to sit on the tractor. The Tribunal after considering the evidence on record rightly held that the petitioner travelled on the tractor engine and driver of the tractor ought not to have permitted the appellant/petitioner to sit on the tractor engine and exonerated the Insurance Company from the liability. First respondent and his driver has violated the terms and conditions of the policy, therefore the finding of the Tribunal that the second respondent/Insurance Company is not liable to pay compensation to the

appellant/petitioner needs no interference by this Court.

17. Coming to the enhancement of quantum of compensation is concerned, the learned counsel for the appellant/petitioner argued that the Tribunal has not awarded any compensation for pain and suffering. As per the evidence of PW.1 and the wound certificate, it shows that the petitioner suffered grievous injuries and also suffered amputation to his left hand. Thus, for the injury received by the petitioner, I am of the view that an amount of Rs.5,000/- shall be awarded as compensation for pain and suffering. Thus, the petitioner is entitled for a total amount of Rs.1,70,590/- (Rs.1,65,590/- + Rs.5,000/-).

18. As far as the rate of interest is concerned, in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***[3] and ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***[4], I am of the view that interest at 7.5% p.a shall be awarded on the enhanced amount from the date of appeal till the date of realisation.

19. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant/petitioner from Rs.1,65,590/- to Rs.1,70,590/- along with interest at 7.5% p.a on the enhanced amount from the date of appeal till the date of realisation. No order as to costs.

20. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 07.08.2015
sr

[1] (2013) 7 SCC 62

[2] 2014 (4) ALD 685

[3] 2013 ACJ 2733

[4] 2012 ACJ 2328