

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1017 OF 2009

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the appellants/ petitioners challenging the judgment and award, dated 20.08.2008, passed in O.P.No.82 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Karimnagar (for short, 'the Tribunal').

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

3. The facts leading to filing of the present appeal are, briefly, as follows:

On 17.02.2006, Mothe Komuraiah and others boarded the Auto bearing No.AP-15-X-740 at Dharmaram Village to go to Khilavanaparty. When the auto reached outskirts of Khilavanaparty, the rider of the Motorcycle bearing No. AP-15-J-9564 had driven the same in a rash and negligent manner and hit the auto. Due to accident, Komuraiah (hereinafter referred to as 'the deceased') sustained fatal injuries and died while undergoing treatment. The Station House Officer, Dharmaram Police Station registered a case in Crime No.19 of 2006 for the offence under Section 304-A I.P.C. against the rider of the motorcycle. After completion of the investigation, the police laid charge sheet against the driver of the auto as well as the rider of the motorcycle and the same was numbered as C.C.No.144 of 2006. By the time of accident, the deceased was aged about 28 years and used to earn Rs.3,000/- per month. Petitioner No.1 is the wife, petitioner Nos.2 and 3 are the children and petitioner Nos.4 and 5 are the parents of the deceased, and they are dependants on the income of the deceased. The auto, which belongs to respondent No.1, was insured with respondent No.2 – Insurance Company as on the date of accident. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.4,00,000/- to the petitioners.

4. Respondent No.1 remained *ex-parte*. Respondent No.2 filed counter denying all the averments made in the petition *inter alia* contending that the owner of the auto has not informed to this respondent about the *factum* of accident. This respondent is not aware of initiation of the criminal proceedings against respondent No.1. The

amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. This respondent is not liable to pay compensation, if any, to the petitioners unless the petitioners proved that the driver of the auto was having valid and effective driving licence as on the date of accident. Hence, the petition may be dismissed.

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

1. Whether accident took place due to the rash or negligent driving of the vehicle i.e. auto bearing No.AP-15-X-740 by its driver?
2. Whether petitioners are entitled to compensation and if so, to what amount and from whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, PW.1 was examined and Exs.A.1 to A.6 were marked. On behalf of the contesting respondent, RW.1 was examined and Exs.B.1 to B.3 were marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the negligence of both vehicles' drivers in the ratio of 50%:50% and allowed the petition in part by awarding compensation of Rs.2,07,750/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

8. Feeling aggrieved by the judgment and award of the Tribunal, the petitioners preferred the present appeal.

9. Heard Sri A.Manohar Reddy, the learned counsel for the petitioners (appellants) and Sri V.Sambasiva Rao, the learned Standing Counsel for respondent No.2 – United India Insurance Company Limited.

10. The contention of the learned counsel for the petitioners is three fold: (1) The Tribunal committed error while arriving at a conclusion that the accident occurred due to the negligence of both vehicles' drivers even though the petition is filed under Section 163-A of the Act; (2) The Tribunal ought not to have held that the petitioners have to forego 50% of the compensation in view of composite negligence on the part of both vehicles' drivers; and (3) The judgment and award passed by the Tribunal is

not sustainable either on facts or on law.

11. Per contra, the learned Standing Counsel for respondent

No.2 submitted that the Tribunal has rightly considered the material available on record and arrived at a conclusion that the accident occurred due to the negligence of both vehicles' drivers, therefore, the petitioners have to forego 50% of the compensation amount for non-impleading of the rider, owner as well as the insurer of the motorcycle. He further submitted that there are no grounds much less valid grounds to interfere with the judgment and award passed by the Tribunal. He also submitted that the Tribunal committed error while fastening the liability on respondent No.2 despite the driver of the auto was not having valid and effective driving licence as on the date of accident.

12. Basing on the rival contentions, the points that arise for determination in this appeal are:

1. Whether the legal representatives of deceased are entitled to file claim petition against one of the joint tort-feasors in case of composite negligence or not?
2. Whether the Tribunal is justified in fastening the liability on respondent No.2 or not?

Point No.1:

13. Basing on the testimony of PW.1 and Exs.A.1 to A.6, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the rider of the motorcycle and the driver of the auto in the ratio of 50%:50%. The finding of the Tribunal on issue No.1 became final so far as respondent Nos.1 and 2 are concerned in view of non-filing of the appeal or cross objections by them.

14. Basing on the complaint lodged by PW.1, the police registered a case in Crime No.19 of 2006 for the offence under Section 304-A I.P.C. against the rider of the motorcycle. After completion of the investigation, the police filed charge sheet against the rider of the motorcycle and driver of the auto. Basing on the oral and

documentary evidence available on record, the Tribunal arrived at a conclusion that the accident occurred due to the negligent driving of the both vehicles' drivers. The accident occurred due to the composite negligence of both vehicles' drivers. In such circumstances, whether the Tribunal is justified in awarding compensation of Rs.2,07,750/- having held that the petitioners are entitled to an amount of Rs.4,15,500/-.

15. It is not in dispute that by the time of accident, the deceased was travelling in the auto. It is not the case of the respondents that the deceased directly or indirectly was responsible to cause the accident. The material available on record clinchingly establishes that there was no negligence or contributory negligence on the part of the deceased to cause the accident. The deceased has nothing to do with the manner of the accident. Whether non-impleading of the rider, owner and the insurer of the motorcycle that itself is a valid ground to forego 50% of the compensation amount by the claimants? In order to resolve the issue, this Court is placing reliance on the following decisions:

1 . T.O. Anthony v. Karvarnan & others, wherein in paras 5 and 6, the Hon'ble Apex Court held as under:

“5. The Tribunal assumed that the extent of negligence of the appellant and the first respondent is fifty:fifty because it was a case of composite negligence. The Tribunal, we find, fell into a common error committed by several Tribunals, in proceeding on the assumption that composite negligence and contributory negligence are the same. In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned.

6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the

injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.”

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2. Syed Ibrahim v. The Union of India (UOI), Rep. by the Secretary to Central Government, Ministry of Defence and another, wherein in para 6 this Court held as under:

“Admittedly, the appellant is the pillion rider on the scooter and there was collision between a jeep and the scooter on which the appellant was travelling. Even assuming that there was compound negligence on the part of the drivers of both the vehicles, the appellant has a right to proceed against any of the joint tortfeasors and claim damages from them, because, he himself is not responsible for the accident. It is well known that the victim of an action by joint tortfeasors can proceed against any or all of the joint tortfeasors and if one of the joint tortfeasors feels that he is not liable and the other joint tortfeasor should be made liable, his remedy is only to proceed against the other tortfeasor and seek reimbursement of the amount paid to the victim. For that reason also, the question as to on account of whose negligence the accident occurred is not very relevant for deciding the claim of the appellant, who is a third party to the accident. He can claim damages against either or both the drivers and owners of the vehicles involved in the accident.”

3. Sombathina Ramu v. T.Srinivasulu and another, wherein in para 10, this Court held as under:

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“Therefore, the legal principle that emerges is that only in cases of contributory negligence, the contributor of such negligence cannot

make a claim for payment of compensation in whole without accounting for his part of contribution. In other words, the extent of the role played by him as assessed by the Court will be taken into account and consideration for the purpose of setting off to a corresponding extent the payment of compensation for the injuries sustained. But, however, in cases of composite negligence, the suitor, having no role to play either directly or remotely and having not contributed any negligence to the causative factors of the injury, is therefore entitled to seek compensation from all of them or any one of them. It is a choice left to him. Correspondingly, it does not lie in the mouth of one of the wrong doers to insist upon the other or all the wrong doers also either to be impleaded or proportionately mulcted with the obligation to compensate the injured.”

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4. A.P.S.R.T.C. and another v. K.Hemalatha and others, wherein in paras 10 and 11, the Hon’ble Apex Court held as under:

“10. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.

11. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that

the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.”

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The Full Bench of the Hon'ble Apex Court in Civil Appeal No.5906 of 2008 in **Pawan Kumar and another. ETC. v.**

M/s. Harkishan Dass Mohan Lal and others, reiterated the principle enunciated in the cases cited in **T.O.Anthony** (supra 1) and **A.P.S.R.T.C.** (supra 4) and in paras 8 and 9 held as under:

“8. In the present case, neither the driver/owner nor the insurer has filed any appeal or cross objection against the findings of the High Court that both the vehicles were responsible for the accident. In the absence of any challenge to the aforesaid part of the order of the High Court, we ought to proceed in the matter by accepting the said finding of the High Court. From the discussions that have preceded, it is clear that the High Court was not correct in apportioning the liability for the accident between drivers/owners of the two vehicles.

9. We, accordingly, hold that the drivers/owners of both the vehicles are jointly and severally liable to pay compensation and it is open to the claimants to enforce the award against both or any of them. The order of the High Court dated 05.07.2006 is modified to the extent indicated above and the appeal is allowed.”

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16. Having regard to the facts and circumstances of the case on hand and also the principle enunciated in the cases cited supra,

I am of the considered view that in case of composite negligence, the injured person or the legal representatives of the deceased are entitled to file a claim petition against one of the joint tort-feasors. Merely because the claimants have not impleaded the driver, owner and insurer of other vehicle, that by itself, is not a valid ground to deprive the claimants 50% of the compensation amount awarded by the Tribunal. In the instant case, the petitioners have filed the petition claiming compensation of Rs.4,00,000/- only.

17. The Tribunal arrived at a conclusion that the deceased may earn Rs.3,000/- per

month. Out of which, 1/3rd shall be deducted towards personal expenses of the deceased. By the time of death, the deceased was aged about 28 years. Therefore, the Tribunal has taken the multiplier '17'. The loss of dependency comes to Rs.4,08,000/- (2,000 X 12 X 17). The Tribunal has rightly determined the loss of dependency. The Tribunal has also awarded an amount of Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate. The Tribunal arrived at a conclusion that the claimants are entitled to an amount of Rs.4,15,500/-. The finding of the Tribunal that in case of composite negligence, the claimants have to forego 50% of the awarded amount is not sustainable in view of the cases cited supra. The respondents have not filed any appeal challenging the quantum of compensation. Therefore, the petitioners are entitled to Rs.4,15,500/-.

POINT No.2:

18. Respondent No.2 has taken a specific plea that the driver of the auto was not having valid and effective driving licence as on the date of accident. The oral testimony of RW.1 coupled with Ex.B.3 reveals that the driver of the auto had obtained driving licence to drive the light motor vehicle non-transport on 10.10.2005 and the same will be valid upto 09.10.2025. The fact remains that as on the date of accident, the driver of the auto was having valid and effective driving licence to drive the light motor vehicle non-transport. The crucial question that falls for consideration at this point of time is whether respondent No.1 had violated the terms and conditions of the policy or not?

19. The driving skill required for driving of the light motor vehicle transport and non-transport is one and the same. The fact remains that the driver of the auto was not having a badge to drive the transport vehicle as on the date of accident. Mere non-holding of badge by itself would not amount to fundamental breach of terms and conditions of the policy so as to absolve the liability of the insurer. In order to resolve this issue, this Court is placing reliance on the following decisions:

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.

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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 judgment⁵ 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.

In ***Kulwant Singh and others Vs. Oriental Insurance Co. Ltd***, 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.

The principle enunciated in the cases cited supra is squarely applicable to the facts of the case on hand.

20. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am unable to accede to the contention of the learned Standing Counsel for respondent No.2 that respondent No.1 had violated the terms and conditions of the policy so as to absolve the liability of respondent No.2.

21. In the result, the Appeal is allowed by awarding compensation of Rs.4,00,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The amount that was already paid by respondent No.2 shall be deducted. Respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners. The Tribunal is hereby directed to collect the court fee from the petitioners on

Rs.15,500/- There shall be no order as to costs.

22. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 13.04.2015

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