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Even though the appeal is dismissed against the owner-cum-insured of the vehicle, the statutory liability of the insurance company survives for consideration and there is no need for the presence of the owner of the vehicle to decide the question of statutory liability of the insurance company at the appellate stage in the cases wherever the Tribunal had recorded a finding that the accident had taken place due to the rash and/or negligent driving of the driver of the motor vehicle and if the said finding is not challenged either by the owner of the vehicle or by the insurance company in view of a judgment of a Division Bench of this Court in Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others. 2.2 The parties in this appeal shall hereinafter be referred to as 'the insurance company', 'the claimant' and 'the insured-cum-owner' for convenience and clarity. 3.1 The case of the claimant, in brief, is this: - 'On the intervening night of 28/29.07.1996 the claimant was driving a Van bearing registration No. AP 37 T 7545 loaded with prawns from Kakinada towards Bhimavaram. On the way, when he was driving the Van slowly on the left side of the road and when the Van had reached a place near Vemavaram, a scooterist had suddenly come across the van. To prevent collision with the scooter, the claimant had swerved the Van to a side; and, in that process the Van had dashed against a Coconut tree. In the said accident, the claimant had sustained injuries all over his body besides a crush injury over his left leg. Immediately after the accident, he was admitted in Government Hospital, Bhimavaram and was treated as an inpatient for twenty one days. After his discharge he had received treatment in a private nursing home at Rajahmundry. He had incurred an expenditure of Rs.35,000/- on medicines and attendant. On account of the injuries sustained, he had suffered pain and mental shock. He is not in a position to carry on his avocation. The prospects of earning money and maintaining his family are lost. The loss caused to him cannot be compensated in terms of the money. Hence, the claim petition is filed claiming a compensation of Rs.2,50,000/- recoverable from the owner-cum-insured and the insurance company, with which the said vehicle was insured.' 3. (b) The owner-cum-insured had remained ex parte before the Tribunal. The insurance company having filed a written statement had resisted the claim on various grounds. 3. (c) At trial, the claimant was examined as PW1 and exhibits A1 to A8 were marked on his side. The Administrative Officer of the insurance company was examined as RW1 and exhibits B1 to B3 were marked on its side. 3. (d) On merits, the Tribunal having held that the pleaded accident resulting in injuries to the claimant had not occurred due to the rash and negligent driving of the Van by the claimant had awarded a compensation of Rs.34,500/- payable with interest at 9% per annum simple from the date of the petition till the date of deposit into Court and had directed that the insured and the insurer, who are jointly and severally liable to pay the compensation, shall deposit the said compensation with interest and costs within two months. 3. (e) Having been aggrieved of the said award, the insurance company had preferred this appeal. It is represented that the claimant, who was satisfied with the awarded amount had not preferred any appeal or cross appeal. 4. The learned counsel for the insurance company had contended as follows: - 'The Tribunal ought to have seen that the claimant himself is the driver of the Van and he was holding a licence authorising him to drive only Light Motor Vehicle (Non transport). At the time of accident, he was driving a Light Motor Vehicle (Transport). Therefore, the claimant did not hold, at the time of accident, a valid and effective driving licence to drive the Van. The provisions of the Act and the terms and conditions of the policy are violated. Therefore, the Tribunal had erred in fastening liability on the insurance company. The Tribunal did not provide adequate opportunity to summon the concerned official of the Road Transport Authority to prove its defence. When the counsel for the insurance company sought time for service of summons on the officer of the RTA, the Tribunal had refused to grant time. The accident had taken place on account of the negligence of the claimant/driver of the Van. Therefore, he is not entitled to claim any compensation under the provisions of the Act. If the claimant is having any claim, he ought to have made a claim under the provisions of the Workmen's Compensation Act, 1923 ('the WC Act' for short). Admittedly, the claimant did not suffer any permanent disability. Hence, he is not entitled to any compensation even under the provisions of the WC Act. Therefore, the appeal may be allowed and the insurance company may be exonerated from paying the compensation to the claimant.' 5. On the other hand, the learned counsel for the claimant had contended as follows: - 'The claimant is admittedly the driver of the Van. Except contending that the claimant is not having a licence authorising him to drive a Light Motor Vehicle (Transport), the insurance company did not adduce any credible evidence that he is not authorised to drive the Van involved in the accident. Even assuming for a moment that the driver/claimant had held a licence authorising him to drive a Light Motor Vehicle (non transport) and that the vehicle involved in the accident is a transport vehicle, still as per the decision of the Hon'ble Supreme Court in National Insurance Company Ltd., v. Annappa Irappa Nesaria alias Nesaragi and others a driver who was having a valid licence to drive a Light Motor Vehicle is also authorised to drive a Light Goods Vehicle as well. Therefore, the insurance company is liable to pay the compensation. Further, as per the settled legal position, the claimant, who is an injured driver/workman is entitled to claim compensation either under MV Act or under the WC Act. He has chosen the forum provided under the MV Act. Therefore, he need not establish negligence as a pre condition for award of compensation. The claimant had sustained grievous injury and the said injury had resulted in permanent disability. The claimant had also filed his wound certificate, medical certificate issued by Civil Assistant Surgeon, Government Hospital, Bhimavaram and also a disability certificate. Therefore, since he had sustained permanent disability, the contentions to the contra are not correct. The Tribunal had awarded a meagre compensation. However, having been satisfied with the said amount of compensation, he did not prefer any appeal. The compensation cannot be said to be high and excessive at any rate. The Insurance company is liable to pay the compensation as held by the Tribunal. There is no merit in the appeal filed by the insurance company. Hence, the appeal may be dismissed.' 6. Now the points for consideration in this appeal are: Whether the award impugned is liable to be set aside in the facts and circumstances urged by the Insurance Company? Whether the insurance company cannot be saddled with the liability to pay the compensation to the claimant on the ground that the claimant/driver held a licence authorising him to drive Light Motor Vehicle (non transport) but the vehicle driven by the claimant at the time of accident is a Light Motor Vehicle (transport) or on any other grounds urged by the Insurance Company? 7. POINT: 7. (a) It is to be noted that the Tribunal having analysed the evidence on record and also the manner of accident had held that the claimant is not responsible for the accident as the accident had occurred when the claimant had tried to swerve the Van to avert an accident with a scooter, which came suddenly across the van. Be that as it may. 7. (b) Exhibit B2-the Photostat copy of the driving licence of the claimant would show that he was holding a licence, which authorised him to drive a Light Motor Vehicle (non transport). However, on this issue, the relevant contention of the insurance company is that the claimant was holding a licence authorising him to drive Light Motor Vehicle (Non transport) but, at the time of accident, he was driving a Light Motor Vehicle (Transport) and that therefore, the claimant did not hold, at the time of accident, a valid and effective driving licence to drive the Van. In support of the said contention, the insurance company had examined its Administrative Officer as RW1. However, before adverting to his evidence, it is necessary to note that it is only suggested to PW1/the claimant that he has no driving licence at the time of accident. Therefore, the case that the claimant held only a licence authorising him to drive Light Motor Vehicle (non transport) and that he was not authorised to drive the Van involved in the accident, which is a Light Motor Vehicle (transport) was not put to him. However, a sweeping suggestion that he has no driving licence, was only given. RW1 had testified in his examination-in-chief that PW1 did not hold a valid driving licence i.e., a licence authorising him to drive a Light Motor Vehicle (transport). He had exhibited exhibit B1-the copy of insurance policy, exhibit B2-the Photostat copy of driving licence of the claimant and exhibit B3-the report of Additional Licensing Authority, Bhimavaram. When it was suggested to him that his said statement is not correct, he had denied the said suggestion. No officer concerned from the Office of the Regional Transport Authority was examined to prove the contents of exhibit B3. Exhibit B3, which is stated to be a report issued by Additional Licensing Authority, Bhimavaram on a perusal would show that the claimant held a licence authorising him to drive Light Motor Vehicle (non transport) which is valid from 13.06.1995 to 12.06.2015 and that during the later period i.e., for the period from 03.03.1999 to 02.03.2002, he had held a valid licence authorising him to drive Light Motor Vehicle (transport). Therefore, exhibit B3 reveals that he held a licence authorising him to drive Light Motor Vehicle (non transport) at the time of accident. Be that as it may. In the decision in National Insurance Company Ltd., (1 supra) a

contention was raised on behalf of the appellant that the driver did not possess an effective licence to drive a transport vehicle. The Hon'ble Supreme Court having considered the relevant provisions of the M.V Act and the definitions of 'light motor vehicle', 'medium goods vehicle' and 'heavy goods vehicle' had held as follows: "From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well. The amendments carried out in the Rules having a prospective operation, the licence held by the driver of the vehicle in question cannot be said to be invalid in law." Further, the learned counsel for the claimant had placed reliance on a recent decision of the Hon'ble Supreme Court of India in S.Iyyapan v. United India Insurance Company Limited. I have gone through the decision cited. In this cited decision, the driver held a valid driving licence to drive a light motor vehicle but the vehicle in question was a Mahindra Maxi Cab and the driver did not get any endorsement in the driving licence to drive such a vehicle. Therefore, the High Court placing reliance on the decision in Sardari v. Sushil Kumar had observed that since the vehicle was being used as a taxi, which was a commercial vehicle, the driver of the said vehicle was required to hold an appropriate licence and had thus held that the insurance company is not liable to pay any compensation to the claimants as there is a breach of the condition of the contract of insurance. Hence, the claimant had preferred a civil appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court considered the question as to – 'Whether the insurance company could disown its liability on the ground that the driver of the vehicle, though duly licenced to drive a light motor vehicle, was not having any endorsement in the licence to drive a light motor vehicle used as a commercial vehicle?'. While answering the said question, the Hon'ble Supreme Court had considered the ratios in all the relevant precedents including some of the citations relied upon by the insurance company and had finally held as follows: "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. 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 that commercial vehicle. The impugned judgment is, therefore, liable to be set aside. 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." Thus, the Hon'ble Supreme Court had finally held that the insurer is liable to pay the compensation. In view of the legal position obtaining, this Court finds no merit in the contention of the insurance company that in this case, it is entitled to be exonerated from the liability to pay the compensation. Therefore, on the ground that the claimant/workman did not hold a valid driving licence i.e., Light Motor Vehicle (transport) the contention that the insurance company cannot be saddled with liability cannot be countenanced. 7. (c) Coming to the contention that the claimant ought not to have approached the Tribunal under the MV Act and that the claimant ought to have claimed compensation, if any, to which he is entitled to under the provisions of the WC Act by approaching an appropriate forum under the said Act, it is necessary to refer to the decision in National Insurance Co., Ltd., v. Prembai Patel and others. As per the settled legal position in the precedent, a workman like the present claimant would be entitled to claim compensation under either of the Acts. In the present case, the claimant has chosen the forum provided under the MV Act. However, it is always open to the owner/employer to take out a policy to cover the entire amount of liability qua an employee by paying necessary (additional) premium. In such a case of contractual extension of liability, the insurance company would be liable to satisfy the entire award made in favour of the claimants. If the owner or employer had not paid such premium/additional premium so as to cover the entire amount of liability qua an employee, then the liability of the insurance company would be restricted to that which is prescribed under the W.C Act. The insurance policy being in the nature of a contract, the parties are bound by it and therefore, the insurance company can be saddled with an extra liability to pay the entire amount of compensation in cases where there is contractual extension of liability by payment and collection of additional premium and the policy conditions/clauses show that the liability of the insurance company is not limited to that which is provided under the W.C. Act. Therefore, it cannot be said that the Tribunal has no jurisdiction to award compensation. 7. (d) Coming to the next contention that since the claimant had not sustained any permanent disability he is not entitled to claim any compensation even as per the provisions of the WC Act, what is to be noted is that the claimant on this relevant aspect has pleaded that, he was admitted in Government Hospital, Bhimavaram immediately after the accident and that he was treated as an inpatient for twenty one days and that after his discharge he had received treatment in a private nursing home at Rajahmundry and that he had incurred an expenditure of Rs.35,000/- on medicines and attendant. He had also pleaded that he had suffered pain and mental shock and was not in a position to carry on his avocation and that the prospects of earning money and maintaining his family are lost and that the loss caused to him cannot be compensated in terms of the money. A perusal of his evidence would show that while reiterating the pleaded case he had affirmed that he had sustained injuries on his legs and that he had lost skin over his entire left leg and that he had also sustained an injury on his right hand and that he was brought to Government Hospital, Bhimavaram and received treatment for one day and that later he was shifted to K.V. Subba Rao Hospital, Rajahmundry and that he had received treatment for one month fifteen days and that he had spent Rs.80,000/- to Rs.90,000/- on medical expenses and that on account of the injuries sustained in the accident he is unable to walk freely and bend his leg and drive the vehicle and that he used to earn Rs.2,500/- per month and that after the accident he is not doing any work and that, therefore, he is entitled to compensation. In his cross examination, he had denied the suggestion that he had not filed any certificate to show that he received treatment at Rajahmundry in the Hospital of K.V. Subba Rao. He had admitted that he had not filed any petition before the labour Court claiming compensation. He had denied the further suggestion that his claim is excessive and exorbitant. No suggestion was put to him that he did not suffer the injuries stated by him or any permanent disability. In his evidence, the copy of his wound certificate, a bunch of medical prescriptions, a bunch of medical bills, medical certificate issued by Dr.K.V. Subba Rao and the disability certificate issued by medical Board, Eluru were exhibited as exhibits A2, 5, 6, 7 and 8 respectively. Exhibit A5 on a perusal would show that the claimant was admitted in Rajahmundry Orthopaedic hospital on 30.07.1996 with open injury left leg and fracture fibula mid 1/3rd and other injuries and that he was discharged on the same day and that he was again admitted on 17.08.1996 and after skin grafting he was discharged on 31.08.1996. Exhibit A7-the medical certificate issued by CAS, Government Hospital, Bhimavaram would show that PW1, who had met with an accident on 29.07.1996 had suffered fracture left leg and Oestomylitis left leg and that he is not able to drive vehicles. Exhibit A8-the medical certificate in respect of an Orthopaedically handicapped person issued by the District Medical Board, Eluru would show that PW1 had suffered post traumatic contracture of soft tissues of left leg and therefore, the percentage of disability was assessed at 30% by the Medical Board. Therefore, there is ample evidence to show that PW1 had sustained permanent disability on account of the injuries sustained in the accident. Hence the contention that PW1 had not sustained any permanent disability also cannot be countenanced. Be that as it may. The Tribunal had awarded only a compensation of Rs.34,500/-, which cannot be said to be excessive or unfair even according to the relevant provisions of the WC Act. 8. Viewed thus, this Court finds that all the contentions urged by the insurance company are devoid of merit and therefore, the appeal deserves to be dismissed. 9. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed. _____________________ M. SEETHARAMA MURTI, J 01st May, 2015 Vjl 2001(1) ALD 453 (DB) (2008) 3 SCC 464 (2013) 7 Supreme Court Cases 62 2008 ACJ 1307 (2005)6 SCC 172 PAGE PAGE 8 MSRM, J CMA_388_04

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