HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A.No.1164 of 2013

JUDGMENT:

This appeal is filed against the order and decree dated 27-12-2012 passed in O.P.No.328 of 2009 on the file of Motor Vehicle Accidents Claims Tribunal-cum-VII Additional District Judge, Mahabubnagar aggrieved by the quantum as well as fixing of liability on the appellant-Insurance Company, whereunder the Tribunal has granted an amount of Rs.2,42,000/- out of claim of Rs.5.00 lakhs.

The case of the appellant is that the respondent No.1 herein filed O.P.No.328 of 2009 in respect of injuries sustained by him on 07-05-2009 in the road accident, while he was traveling in an autorickshaw, which hit the Motor Cycle bearing No.AP 22U-2064, due to which, the petitioner fell down and sustained compound fracture of both bone of right leg, grievous injury to liver and abdomen, grievous injuries on face and all over the body and all other inmates of auto sustained injuries. According to him, the accident occurred due to gross negligence on the part of driver of auto and basing on the complaint, a crime was also registered under Sections 337 and 338 IPC and after the investigation, police filed charge sheet holding the driver of auto was responsible for the accident. It is further stated that the respondent No.1 was immediately shifted to hospital and admitted as in-patient and from there he was referred to Osmania General Hospital, where he underwent major surgeries over abdomen and liver and major operation to right leg. The respondent No.1 has spent more than Rs.5.00 lakhs. At the time of accident, the respondent No.1 was hale and healthy and he was a skilled labour and earning Rs.5,000/- per month.

Respondent No.1 in the OP, who is the owner of the vehicle remained exparte before the trial Court.

The appellant-Insurance Company, who is the 2nd respondent in OP. filed counter denying some averments of the claim petition. Respondent No.1 admitted that the policy was valid and in force from 30-03-2009 to 29-03-2010. The driver of the auto did not possess valid and effective driving license, and was not qualified to drive it and thereby contravened the provisions of Motor Vehicles Act and denied its liability. Basing on the evidence of Pws1 and 2 and Exs.A-1 to A-10 and the evidence of RWs1 and 2 and Exs.B-1 to B-9 the Tribunal granted compensation of Rs.2,42,000/-. Hence, this appeal is filed by the Insurance Company.

Learned counsel for the appellant submits that though the accident took place on 07-05-2009, whereas permit was issued to the crime vehicle on 11-05-2009. Since on the date of accident, there is no permit to the crime vehicle, the Insurance Company is not liable to pay compensation and directing the Insurance Company to pay compensation and recover from the owner is erroneous. He also submits that compensation granted for the injury sustained by the respondent No.1 is highly excessive.

On the other hand, learned counsel for the 1st respondent submits that admittedly the Tribunal held that since the policy is in existence as on the date of accident, it was the responsibility of the appellant to verify whether the vehicle was issued permit and as such, held that the appellant-Insurance Company is liable to pay compensation and recover from its owner.

Admittedly, the crime vehicle did not have permit as on the date of accident. In **National Insurance Company Limited v. Challa Bharathamma and others**[1], the Apex Court held as under:

> " High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal *vis-à-vis* one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of section 149 (2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable."
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> The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned executing court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the concerned Regional Transport Authority. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e.the insured. In the instant case considering the quantum involved we leave it to the

discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

In **National Insurance Company Limited v. Swaran Singh and others**[2] and **S.Iyyapan v. United India Insurance Company Limited and another**[3]**,** it is held Insurer is liable to pay compensation to the claimant and then recover the same from the owner of the vehicle, as such award of Tribunal does not require interference.

As per dicta laid down by the above decisions, the appellant has to pay compensation to the claimant and recover the same from the owner of the vehicle subject to guidelines enunciated by the Apex Court in **Oriental Insurance Company v. Nanjappan**[4]**.**

As far as the quantum of compensation is concerned, the Tribunal has taken Rs.100/- per day for 25 days, Rs.2500/- per month and Rs.30,000/- per annum and disability has taken at 40% basing on the disability certificate Ex.A.9 issued by Medical Board and member of the Medical Board also examined as PW.2. Therefore, by taking into consideration the disability of the petitioner at 40%, the Tribunal has taken proper multiplier '16' and the income of petitioner at Rs.30,000/- per annum and rightly granted compensation of Rs.1,92,000/-. Apart from it, the Tribunal has granted Rs.50,000/- towards medical expenditure. As such, I do not find any infirmity committed by the Tribunal in awarding compensation warranting interference of this Court. However, the Appellant-Insurance Company is to pay and recover from the owner of the vehicle as per the guidelines of Apex Court in **Nanjappan's case** (4 supra).

In view of above facts and circumstances, I do not see any merit in the appeal and accordingly, the same is dismissed. Miscellaneous petitions pending, if any, in the appeal shall stand closed.

A.RAJASHEKER REDDY,J

16-12-2015
Nvl

[1] 2004 ACJ 2094

[2] 2004 ACJ 1

[3] (2013) 7 Supreme Court Cases 62

[4] 2014 (13) SCC 224