THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.Nos.399 of 2010 and 3320 of 2011

COMMON JUDGMENT:

Both the claimant and Insurance Company have challenged the Award dated 30.10.2009 in M.V.O.P.No.1612 of 2006 passed by the Chairman, Motor Accident Claims Tribunal-cum-Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-XXIII Additional Chief Judge, Hyderabad (for short 'the Tribunal').

2) The factual matrix of the case is thus:

a) On the intervening night of 19/20-05-2006, the claimant who was working as Sweeper in the Municipal Corporation of Hyderabad, while attending her duties in the early hours of 20.05.2006, a Tavera van bearing No.AP 9 TV 419 being driven by its driver in a rash and negligent manner dashed her. In the resultant accident, the deceased sustained crush injuries on legs and other parts of the body and immediately she was shifted to Gandhi Hospital, Secunderabad where her leg was amputated and she was removed from service. It is averred that the driver of the van was responsible for the accident. On these averments, the claimant filed M.V.O.P.No.1612 of 2006 under Section 166 of Motor

Vehicles Act, 1988 (for short "M.V Act") against respondent Nos.1 and 2, who are the owner and insurer of the offending van respectively and claimed Rs.5,00,000/- as compensation under different heads mentioned in OP.

b) R1 remained *ex parte*.

c) R2/Insurance Company filed counter and opposed the claim petition denying the material allegations and urged to put the claimant in strict proof of the same. R2 denied the age, avocation and income of the injured claimant. It contended that there is no fault on the part of driver of the van and he had no valid and effective driving licence at the time of accident and as such it is not liable to pay the compensation. It further contended that compensation claimed is excessive and exorbitant and prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A4 were marked on behalf of claimant. RW1 was examined and Exs.B1 to B4 were marked on behalf of respondents.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.2,70,000/- with costs and interest at 7.5% p.a. against respondent Nos.1 and 2 as follows:

Loss of earnings	Rs. 50,000/-

Disability	Rs.1,20,000/-
Pain and suffering and injuries Rs.1,00,000/-	

Total	Rs.2,70,000/-

Hence the appeals: 1)MACMA No.399 of 2010 by the claimants challenging the quantum of compensation as inadequate and 2) MACMA No.3320 of 2011 by Insurance Company.

3) The parties in both the appeals are referred as they were arrayed before the Lower Tribunal.

4) Heard arguments of Sri Kasi Reddy Jagathpal Reddy, learned counsel for appellant in MACMA No.399 of 2010/respondent No.1 in MACMA No.3320 of 2011; Sri T.Mahender Rao, learned counsel for Insurance Company in both the appeals. Notice sent to the owner in both the appeals unserved.

5) In MACMA No.3320 of 2011 filed by the Insurance Company, learned counsel for appellant fulminated the award on the ground that the Tribunal has not discussed and considered the plea of Insurance Company that the driver of the offending vehicle i.e, Sura Badraiah has no valid and effective driving licence and his driving licence was a fake one. He would argue that the award was totally silent on the driving licence aspect and therefore, severe injustice was caused to the Insurance Company. He

submitted that the evidence placed by the Insurance Company would show that the driver had no valid driving licence but the licence copy produced by him before the police relates to one S. Venkanna S/o. Laxmaiah. Since the driver produced a fake driving licence, the Tribunal ought to have exonerated the Insurance Company for clear breach of terms of the policy. Unfortunately, it did not touch that aspect and passed the impugned award which is liable to be set aside. He thus prayed to allow his appeal and exonerate the Insurance Company.

6a) Per contra, in MACMA No.399 of 2010 learned counsel for appellants/claimants firstly argued that compensation awarded under different heads was quite low and unjust as the Tribunal failed to appreciate the facts that the claimant, who was a contract sweeper in Municipal Corporation of Hyderabad suffered 100% disability due to amputation of her right leg and failed to award just compensation for the loss of her future earnings. He submitted that the Tribunal awarded notional amounts under different heads which are quite inadequate. He cited several decisions giving guidelines on the method of computation in case of permanent disability.

b) Secondly opposing the argument of the Insurance Company to exempt it from liability, learned counsel argued that though the Insurance Company succeeded to some extent in establishing that the driver had no valid driving licence as his licence was not a genuine one, still it failed to establish the other crucial fact that the owner had knowingly allowed him to drive the vehicle and unless the Insurance Company establishes that fact also it cannot repudiate its liability particularly in respect of third party claims. He thus prayed to allow his appeal and enhance the compensation suitably and also to dismiss the appeal filed by the Insurance Company.

7) In the light of above rival arguments, the point for determination is:

"Whether the award passed by the Tribunal is factually and legally sustainable?"

8) **POINT**: The accident, involvement of Tavera car bearing No.AP 9 TV 419 and injuries to the claimant and amputation of right leg below knee are admitted facts. The Insurance Company repudiates its liability on the main contention that the driver of the crime vehicle had no valid and effective driving licence but he produced fake driving licence. The evidence of RW.1 coupled with Ex.B.2—investigation report and Ex.B.3—driving licence extract would support the contention of the Insurance Company. As per Ex.B.2—investigation report, one S.Badraiah S/o. Balaiah was the driver of the offending vehicle and he produced driving licence No.DLEAP02980202006 and Badge No.4844 before the

Police of Jubilee Hills P.S and the investigator collected the copy of licence and verified with the RTA authorities, Ranga Reddy and obtained Ex.B3—licence copy. As per which, the said licence stands in the name of one S.Venkanna S/o. S. Laxmaiah but not in the name of S.Badraiah S/o. S.Balaiah. Therefore, there is truth in the contention of the Insurance Company that the driver—Badraiah produced a fake driving licence before the police. Now the point is whether on that ground the Insurance Company can be exonerated. The answer is negative. The Insurance Company in order to get exempted from the liability has not only to establish the breach of the terms of the policy i.e, the driver was not holding valid driving licence and instead he possessed a fake driving licence in the instant case but it must also establish that the owner having known that the driver possessed a fake driving licence, still allowed him to drive the vehicle. Unless that fact is established, the Insurance Company cannot be absolved from the liability particularly in respect of the claims of third parties. It was so held by a learned Judge of this High Court in the case of ***Oriental Insurance Co. Ltd. vs. Ravi Vishnu and another*[1]*.*** In the similar case of the driver holding a fake driving licence, the learned Judge observed thus:

> *"Para 11: xx xx xx.. In the instant case, the appellant-insurer produced only Exh.B-3 endorsement of the RTA concerned on the reverse of Exh.B-2 letter addressed*

by the insurer indicating that the licence bearing No.4176/96/Hyderabad was not issued to Narendra Pande, the driver of the offending vehicle. But, as per the ratio laid down in Swaran Singh case (supra), it will be for the insurer to establish by convincing evidence that insured did not take adequate care and caution to verify the genuineness or otherwise of the licence held by the driver. Such being the position, in the instant case the burden is on the appellant - insurance company to prove that the owner of the vehicle did not exercise the required care and caution to verify the genuineness or otherwise of the license held by the driver of the vehicle. But the insurer did not adduce enough evidence in this regard. The insurer did not take any steps to summon either the driver or owner of the offending vehicle. The driving license which was actually possessed by the driver of the offending vehicle was not before the learned Tribunal. Only Exh.B-2 letter addressed by the insurer and Exh.B-3 endorsement made by the RTA concerned thereon were before the Tribunal. From these two documents and the evidence of R.W.2, it was not actually possible for the learned Tribunal to hold that the licence possessed by the driver of the vehicle was fake. The finding was arrived at only basing on the fact that the driver and the owner of the vehicle did not contest the case and also on the premise that there was no adequate cross examination by the claimant enabling the Tribunal to arrive at the conclusion that the driving licence supposed to have been held by the driver of the offending vehicle was in fact genuine. This finding recorded by the Tribunal below is factually incorrect since it was not based on any proof by the insurer either that the licence possessed by the driver was in fact fake or that the owner of the vehicle failed to take adequate care that the driving licence which was produced by the driver to drive his vehicle was in fact, fake. It would be relevant to know in this context that it is not the specific case of the appellant - insurer that the driver of the offending vehicle had no driving licence at all. Its version was only that the driving licence possessed by the driver of the offending vehicle was a *fake one, but, the said fact had not been positively proved by the appellant. One cannot expect that the owner of the vehicle had to indulge in roving enquiry as to the genuineness of the driving licence produced by the driver before permitting him to drive a particular vehicle. It is suffice on his part, if he prima facie satisfied about the genuineness of the driving licence produced by the driver of the vehicle. In the instant case, the appellant-insurer was unable to demonstrate that the owner of the vehicle failed to exercise adequate care as to the genuineness of the driving licence of the driver of the vehicle or knowing fully well that licence possessed by the driver is fake he wilfully allowed the driver to drive the offending vehicle. Therefore, absolutely, there was no material before the Tribunal that the breach committed by the owner is a fundamental breach or a wilful breach. In such an event, in view of the ratio laid down in Swaran Singh case (supra) the appellant - insurance company cannot be exonerated from the liability to pay compensation to the respondent No.1- claimant."*

In the instant case also the Insurance Company has not been able to establish that the owner had knowingly allowed his driver to drive the vehicle. Therefore, the Insurance Company cannot be absolved from its liability. Unfortunately the lower Tribunal has not discussed about the driving licence aspect.

9) Now coming to the quantum of compensation, it must be said that the lower Tribunal has not properly appreciated the facts and evidence and awarded compensation under three different heads notionally. Hence, it necessitates me to reconsider the compensation.

a) Firstly, the lower Tribunal awarded Rs.1,00,000/- on notional basis for pain and suffering and medical expenses. Medical expenditure is concerned, as per Ex.A.2 the claimant was treated in Gandhi Hospital, Secunderabad which is a Government Hospital. Hence most of the treatment would be free of cost. Therefore, the claimant needs to spend low amount towards medical expenditure. Further, the claimant has not produced any medical bills in proof of her medical expenditure. Therefore, while awarding **Rs.50,000/-** for pain and suffering due to fracture injuries to both legs and consequent amputation of right leg, a sum of **Rs.25,000/-** is awarded towards medical and other incidental expenditure.

b) Then the loss of income due to amputation is concerned, the Tribunal awarded Rs.50,000/- on notional basis. I am afraid, this lump sum awarding of compensation without following multiplier method is quite inappropriate. Time and again it has been reiterated that multiplier method should be adopted for computation of compensation for loss of earning capacity of the victim. The claimant was working as contract sweeper in Municipal Corporation of Hyderabad by the date of accident and in fact as per Ex.A.1—FIR, she met with accident while herself and another sweeper were attending sweeping work near Jubilee Hills Check post, Hyderabad. So her employment as contract labour can be accepted. She claimed in her evidence that she was getting Rs.4,000/- p.m. but there is no proof in that regard. Having regard to the nature of her employment and the year of accident as 2006, her monthly income can be reasonably fixed as Rs.1,500/-. To this amount, a sum of Rs.500/- can be added towards future prospects. Then selection of multiplier is concerned, the age of the claimant was mentioned as 50 years in Ex.A.1—FIR but in Ex.A.2 —discharge card, her age was mentioned as 45 years. Therefore, she is aged between 45 to 50 years and having regard to her age, ‘13’ is accepted as multiplier. As per the evidence of PW.2 and Ex.A.4—disability certificate, the claimant suffered 80% physical disability. However, her functional disability can be accepted as 100% in view of the fact that due to amputation in her right leg she cannot have any gainful employment. Thus the compensation for loss of earning power comes to **Rs.3,12,000/-** (Rs.2,000/- x 12 x 13).

c) Then the Tribunal awarded Rs.1,20,000/- towards physical disability which can be said as compensation towards loss of amenities. Having regard to the fact that the physical disability is 80%, consequent loss of amenities can be reasonably fixed at **Rs.75,000/-**. Thus, the total compensation payable to the claimant under different heads is as follows:

Pain and suffering Rs. 50,000-00
Medical and other incidental expenditure Rs. 25,000-00
Loss of earning power Rs. 3,12,000-00
Loss of amenities Rs. 75,000-00

Total: Rs.4,62,000-00

Thus, the compensation is enhanced by Rs.1,92,000/- (Rs.4,62,000/- minus Rs.2,70,000/-).

10) In view of the above discussion, the two appeals are disposed of and ordered as follows:

i) M.A.C.M.A. No.3320 of 2011 filed by Insurance Company is dismissed without costs and

ii) M.A.C.M.A. No.399 of 2010 filed by claimant is partly allowed and the compensation is enhanced by Rs.1,92,000/- with proportionate costs and simple interest at 7.5% p.a from the date of O.P. till the date of realization.

iii) Respondent Nos.1 and 2 in the O.P. are directed to deposit the compensation amount within two(2) months from the date of this judgment, failing which execution can be taken out against them.

As a sequel, miscellaneous applications pending, if any, in these appeals shall stand closed.

U. DURGA PRASAD RAO, J

Date: 09.12.2015
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[1] 2011 ACJ 1157 (AP)