THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

M.A.C.M.A. No.3431 of 2008

JUDGMENT:

Challenging the order and decree dated 20.03.2006 passed in O.P.No.1523 of 2004 on the file of the X Additional Chief (Fast Track Court), City Civil Court, Hyderabad, the National Insurance Company Limited preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act") .

For the sake of convenience, the parties will hereinafter be referred to as arrayed in O.P.

The facts in issue are as under:

The claimant filed an application under Section 166 of the Act, claiming compensation of Rs.1 lakh for the injuries sustained by him in a motor vehicle accident that occurred on 03.04.2004 at 05.30 p.m. near Ambedkar College, Baghlingampally, P.S. Chikkadapally. It is stated that on the fateful day, the petitioner along with his son was going on a cycle to bring drinking water and when they reached opposite to Ambedkar College, one Eicher Van bearing No.AP 11 B 8473, owned by the Municipal Corporation, driven by its driver in a rash and negligent manner dashed against the cycle. As a result of which, both of them fell down, the son of the petitioner died on the spot, while the petitioner sustained injuries. In respect of the said accident, a case in Crime No.178 of 2004 came to be registered. The police after investigation filed a charge sheet alleging that the accident took place due rash and negligent driving by the driver of the crime vehicle. Since the petitioner incurred huge expenses and sustained severe injuries, an application came to be filed claiming compensation of Rs.1 lakh.

The first respondent remained *ex parte*, while the second respondent filed counter denying the manner in which the accident took place and also the involvement of the Eicher Van. In any event it is stated that the amount of compensation claimed is highly excessive and sought for dismissal of the petition.

A supplementary counter came to be filed by the second respondent contending that the investigation done by the Insurance Investigator would reveal that the driver of the crime vehicle was in a drunken condition at the time of accident and that he was not having a valid driving license at the time of accident. Hence, it is stated that the second respondent is not liable to pay any compensation on behalf of the first respondent-Municipal Corporation, as the Corporation has violated the terms and conditions of the policy.

Basing on the above pleadings, the Court below framed the following issues:

1. Whether the accident resulted in injuries to the petitioner occurred due to rash and negligent driving of the Eicher vehicle bearing No.AP 11V 8473?

2. Whether the petitioner is entitled for any compensation, if so, what amount and from whom?

3. To what relief?

In support of his case, the petitioner examined himself as PW.1 and got marked, the certified copy of the first information report as Ex.A1, certified copy of charge sheet as Ex.A2, certified copy of medical certificate as Ex.A3, certified copy of Medico Legal Certificate as Ex.A4, Medical Certificate as Ex.A5, Medical Certificate including bill as Ex.A6, Photo (positive) as Ex.A7. On behalf of the second respondent, the Administrative Officer of the Insurance company was examined as RW.1 apart from marking the policy as Ex.B1.

After appreciating oral and documentary evidence, the Tribunal awarded compensation of Rs.17,500/- with interest to be paid by the respondents.

It is contended by the counsel for the appellant that though no documents are filed to show that the driver of the crime vehicle was in a drunken condition at the time of accident but the averments in the charge sheet itself are sufficient to prove their case. It is further stated that the number of the vehicle mentioned in the report filed by the second respondent is different from the number mentioned in the insurance policy and as such the Insurance Company is not liable to pay compensation.

Per contra, learned counsel for the claimant would submit that the findings arrived at by the Tribunal warrants no interference as the same are based on evidence adduced. As seen from the arguments advanced, there is no dispute with regard to the date of incident and also the involvement of an Eicher van.

Three grounds are raised by the learned counsel for the appellant. They are as follows:

i. Whether the driver of the vehicle was not having a valid license at the time of driving the vehicle?

ii. Whether the driver of the vehicle was in a drunken condition at the time of accident?

iii. Whether the number of the vehicle involved in the accident and the number of the vehicle mentioned in the policy are different?

POINT No.1:

The contents of Ex.A2 would disclose that on verification of a copy of the driving Licence No.143857 dated 20.05.1977, there was no period of its vailidity. As such, the driver of the vehicle was directed to produce the original driving licence, but he failed to do so. From the contents of Ex.A2 and the evidence of RW.1, it is clear that the accident occurred due to rash and negligent driving of the driver of the crime vehicle bearing No.AP 11V 8473.

In the cross examination, RW.1 deposed as under:

> '…I have not filed investigation report of the investigator in this Court in the above case. I do not have any personal knowledge about the accident and I am speaking as per records of our office. The O.P. records and accident case records will be done by me and one more Assistant. The copy of the C.C. of M.L.C.No.6145 mentioned in this affidavit has not been filed in this Court. I do not know the contents in MLC No.6145. It is not true to suggest that, the accused was not mentioned his breath smells alcoholic. This respondent issued policy to the vehicle bearing No. AP 11 V 8473 and the above policy was issued by the Chief Transport Officer, Municipal Corporation of Hyderabad. It is not true to suggest that the insurance company is not liable to pay the compensation. It is true that, I have stated that the driver was in drunken condition and also stated the contents of MLC No.6145 as breath smells alcoholic. It is not true to say that when the breath smells alcoholic the person need not be a drunken condition."

The driver of the vehicle had driving license bearing No.143857, dated 20.05.1977, but its validity was not extended. There is no material placed before the Court to prove that the driver was not having valid driving licence at the time of the accident. Ex.A2 discloses that the driver of the vehicle was not having a valid driving licence. Even the evidence of PW.1 corroborates the evidence of RW.1 to the effect that the driver of the crime vehicle had no valid driving licence at the time of the accident and the owner entrusted the vehicle to a person who has no license, thereby violating the terms of the policy.

POINT No.2:

It is to be noted that no material was placed before the Court with regard to the drunken condition of the driver at the time of accident. The accident took place on 03.04.2004 at around 05.30 p.m., and the accused surrendered before the police on the same day at about 11.30 p.m. When he was taken for medical examination to the Gandhi Hospital, the doctor who examined him stated that the accused breath smells alcohol, but there is no mention of the fact that the accused was under the influence of alcohol at the time of accident. Now the approximate time of consumption of alcohol was incorporated in the Medical Certificate. RW.1 stated in his evidence that the company has no document to substantiate that the driver of the crime vehicle was under the influence of alcohol at the time of accident, but, however, he denied the suggestion that the driver of the crime vehicle was not under intoxication at the time of accident. No material is placed by the second respondent to show that the municipal authorities had knowledge that the driver of the crime vehicle drove the vehicle in an intoxication condition. Therefore, the argument of the learned counsel for the appellants that the driver of the crime vehicle was in drunken condition at the time of accident cannot be accepted.

POINT No.3:

It is to be noted that the vehicle bearing No. AP 11 B 8473, which was involved in the accident, belongs to Municipal Corporation, Hyderabad and the said vehicle was detained in the police station immediately after the accident. During the course of investigation, police found that the crime vehicle was bearing No.AP 11 V 8473, which is as per the R.C.Book and insurance company and not AP 11 V 8483 as stated in the First Information Report. But however, the fact remains that the vehicle involved in the accident and the vehicle insured with the insurance company is one and the same. It is not the case of the insurance company that the claimant has substituted the vehicle or the insurance policy. The insurance policy which is placed on record as Ex.B1 would clearly disclose that the crime vehicle and the vehicle insured are one and the same i.e., the vehicle bearing No. AP 11 V 8473.

The issue as to whether the insurance company is liable to pay any compensation, where the terms and conditions of policy are violated came up for consideration before the Apex Court in **NATIONAL INSURANCE COMPANY LIMITED V. SWARAN SINGH AND OTHERS.** In the said case, the Apex Court held as follows :

> 10. Coming to the contention of the learned counsel for respondent Nos.1 to 5 that even in the absence of any liability on the insurance company, the responsibility is still on the latter to pay the amount to the claimants and recover the same from respondent No.6, in Swaran Singh (supra) a three Judge Bench of the Apex Court has dealt with this aspect with reference to the case law holding the field on this issue. The Supreme court made reference to its various earlier judgments including those in British India General Insurance Co., Ltd., v. Captain Itbar Singh and others (1960) 1 SCR 168), BIG Insurance Co., Ltd., v. Captain Itbar Singh and others (AIR 1959 SC 1331), Skandia Insurance Company Ltd., v. Kokilaben Chandevadan and others (1987) 2 SCC 654), Sohan Lal Passi v. P.Sesh Reddy and others (1996) 5 SCC 21), Kashiram Yadav and another v. Oriental Fire and General Insurance Co., Ltd., and others (1989) 4 SCC 128) and held that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or the driver thereof has been holding the field for a long time."

In this connection, it may be relevant to extract paragraph 104 which is as under :

> "We may, however, hasten to add that the Tribunal and the Court must, however, exercise their jurisdiction to issue such a direction **upon consideration of the facts and circumstances of each case** and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause(a) of sub-section(2) of Section 149 of the Act, the insurance company shall be entitled to realize the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act. However, in the event, having regard to the limited scope of inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefore against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage."

In paragraph 81 of the Judgment the Supreme Court observed as under :

> "The right to avoid liability in terms of sub-section (2) of Section 149 is restricted as has been discussed hereinbefore. It is one thing to say that the insurance companies are entitled to raise a defence but it is another thing to say that despite the fact that its defence has been, accepted **having regard to the facts and circumstances of the case; the Tribunal has power to direct them** to satisfy the decree at the first instance and then direct recovery of the same from the owner. These two matters stand apart and require contextual reading." (Emphasis added)

Similarly in ***NATIONAL INSURANCE CO. LTD v. KUSUM RAI & OTHERS,*** the Apex Court was dealing with a situation where the respondent who was the owner of a jeep was admittedly using the said vehicle as a taxi. One Ram Lal, who was working as a taxi driver, was having a licence to drive only light motor vehicle. The taxi met with an accident resulting in the death of a minor girl. Relying upon a decision of the apex Court in ***NEW INDIA INSURANCE COMPANY LIMITED v. KAMALA***, the Tribunal held that the insurance company cannot get rid of its third party liability. It was further held that the insurance company shall pay and recover the amount from the owner of the vehicle. On appeal, the Apex Court relying upon a decision of the Court in **ORIENTAL INSURANCE CO. LTD., V. NANJAPPAN**, confirmed the findings of the Tribunal. In ***NATIONAL INSURANCE COMPANY LIMITED v. ANNAPPA IRAPPA NESARIA*** the apex Court was dealing with a situation where the vehicle involved in the accident was a matador van having a goods carriage permit and the driver was having a licence to drive a light motor vehicle. The driver of the vehicle did not possess an effective driving licence to drive a transport vehicle. The Tribunal held that the driver was having a valid driving licence and allowed the claim. In appeal filed by the insurance company, the High Court dismissed the appeal holding that the claimants are third parties and even if there is a violation of terms and conditions of the policy, the insurance company cannot be permitted to contend that it has no liability. Challenging the same, an appeal was preferred before the Apex Court. The Apex Court after considering the relevant provisions of the Act and definition and meaning of light goods carriage, light motor vehicles, heavy goods vehicles, finally held that a driver who had a valid licence to drive a light motor vehicle, therefore, was authorized to drive a light goods vehicle as well.

The Apex Court in **Kusum Lata v. Satbir** observed as under :

> "In respect of the dispute about licence, the Tribunal has held and, in our view rightly, that the insurance company has to pay and then may recover it from the owner of the vehicle. This Court is affirming that direction in view of the principles laid down by a three-Judge Bench of this Court in the case of National Insurance Company Limited v. Swaran Singh and others."

The apex Court in ***S. IYYAPAN v. UNITED INDIA INSURANCE CO.LTD AND ANOTHER*** held that the insurer cannot disown its liability on the ground that the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement was obtained to drive commercial vehicle. The apex Court in the above mentioned case has categorically held that it is a statutory right of a third party to recover the amount of compensation so awarded from the insurer and further held that it is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any terms and conditions of the insurance policy. The judgment of the apex Court referred to above dealt with a similar situation where the offending vehicle was Mahindra Maxi Car and the driver of the said vehicle was not having any endorsement in the licence to drive such vehicle. In such a situation, the Apex Court held that insurer cannot get rid of their liability. The Court directed the insurance company to pay the amount to the claimants and recover the same from the owner of the vehicle.

The heading "Insurance of Motor Vehicles against Third-Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of the 1939 Act) itself shows the intention of the legislature to make third-party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons traveling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third-party insurance is in force.

From a reading 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 was liable 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 147 of the Act. **(S. IYYAPAN (8 supra)**

A perusal of the material placed before the Court would indicate that the accident in the instant case took place in the year 2004. The claimant who has been fighting for compensation since 2004 cannot be compelled to struggle further for recovery of the amount by directing them to recover the same from the owner. Having regard to the peculiar facts and circumstances of the case, I am satisfied that the Insurance Company can be directed to pay the entire amount to the claimant and recover the same from the owner.

For the aforesaid reasons, this Court is of the view that the order under challenge does not warrant any interference by this Court. Hence, the M.A.C.M.A. is dismissed. However, the National Insurance Company Limited is at liberty to avail the remedies available under law for recovery of the amounts, if any from the Municipal Corporation. No costs.

The miscellaneous petitions, if any pending, shall stand closed.

C. PRAVEEN KUMAR, J

21.08.2015

vhb