HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA Nos. 884, 885, 902 and 1452 of 2005

Common Judgment:

These appeals are directed against the common order, dated 23rd August 2004, rendered in OP Nos.961 of 2002, 858 of 2002, 859 of 2002 and 857 of 2002 respectively, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Kurnool (for short 'the Tribunal'). Aggrieved of the said order, the second respondent in the said OPs - M/s New India Assurance Company Limited, Kurnool, preferred these appeals challenging the award and decrees passed by the Tribunal on the ground that the driver of the Auto-rickshaw, which was involved in the accident, was possessing a licence to drive non-transport Auto-rickshaw, but he was driving the passengers Auto-rickshaw without possessing a badge and driving licence.

2. In fact, in today's cause list, three appeals have been notified, which are MACMA Nos.902 of 2005, 885 of 2005 and 1452 of 2005. Learned counsel for the first respondent – claim petitioners brought to the notice of this Court that there is yet another appeal in MACMA No.884 of 2005, arising out of the same common judgment, pending on the file of this Court. Therefore, the said MACMA No.884 of 2005 is also taken up for disposal by way of common judgment along with the three appeals printed in today's cause list.

3. For convenience sake, the parties are hereinafter referred to as they were arrayed before the Tribunal in the Original Petitions.

4. The facts that are necessary for disposal of the instant appeals are; on 11.03.2002 at about 11.00 AM, all the petitioners along with others went to Kodumur village from Gonegandla for purchasing clothes and later boarded an Auto bearing registration No.AP-21-T-7595 at Gonegandla to return to Kodumur. Since the driver of the Auto drove it in a rash and negligent manner at high speed when the Auto reached Varkur Village road crossing, he lost control over it, as a result of which, it capsized and all of them sustained serious injuries. The Station House Officer, Kodumur Police Station, has registered a case in Crime No.35 of 2002 against the driver of the Auto. They were all shifted to Shakthi Nursing Home, at Yemmiganur, initially and later they have taken treatment in various hospitals. According to them, they became permanently disabled and, therefore, they laid the claim petitions seeking Rs.50,000/- each in MVOP Nos.961 of 2002, 858 of 2002 and 859 of 2002 and Rs.1,00,000/- in MVOP No.857 of 2002 respectively, under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

5. Before the Tribunal, the first respondent – claimants remained *ex parte* and did not choose to contest the claim. The second respondent – Insurance Company filed a common written statement in all the petitions raising various pleas including the plea of the driver's failure to possess effective driving licence at the relevant time, which appears to be a general plea along with other pleas without elaborating it as to the nature of licence the Auto driver did possess at the relevant time.

6. On the basis of the said pleadings, the Tribunal framed the following three issues.

> "1. Whether the accident that occurred on 11.03.2002 at about 11.00 AM, near Varkur road crossing, which resulted in injuries to the petitioner, was on account of the rash and negligent driving of the auto No.AP-21/T-7595 by its driver?
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> 2. Whether the petitioners are entitled to the claimed amounts respectively if not, how much and against whom?
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> 3. To what relief?"

7. During enquiry, the petitioners respectively, examined themselves as PWs.1 to 4 and also examined Dr. B. Chandranna as PW.5 and marked Exs.A1 to A12. On behalf of the second respondent - Insurance Company RWs.1 and 2 were examined and marked Exs.B1 to B6.

8. The Tribunal, on the basis of the evidence of the petitioners supported by the documentary evidence, Exs.A1 and A2, held issue No.1 in favour of the petitioners.

9. On issue No.2, in all these petitions, the Tribunal, having determined the compensation to which the petitioners were entitled to, adverted to the contention of the learned Standing Counsel for the second respondent – Insurance Company, that the driver of the Auto was possessing only non-transport Auto-rickshaw licence and, therefore, he did not have right to take passengers and, thus, it clearly amounted to violation of the terms of the policy and, thereby, sought to exonerate the Insurance Company from the liability to pay compensation and, in that context, even referred to the decision in **National Insurance Company Limited v. Swaran Singh** and, having extracted the observations contained in paragraph '82' at page '29', observing that the insurer cannot be allowed to avoid its liability merely for technical breach of conditions concerning the driving licence, fastened liability on the second respondent - Insurance Company along with the first respondent to pay the amounts awarded as compensation to the petitioners respectively.

10. It is the aforesaid order which is under challenge in the instant appeals agitating a common ground in each of these appeals that the Tribunal did not properly appreciate the evidence of RW.2, a Senior Assistant in RTA Office, who has categorically stated that the driver was having driving licence to drive the non-transport Auto-rickshaw and if he has to drive the passenger-auto he must have badge and transport licence and, therefore, sought to set aside the award and decrees. It is further stated that the Tribunal, somehow, overlooked the fact that the claim petitions under Sections 163-A and 166 of the Act are not maintainable as the claimants would have to file the petitions either under Section 163-A or under Section 166 of the Act.

11. At the outset, it has to be observed that during arguments the main emphasis of the learned Standing Counsel for the appellant – Insurance Company has been that the driver of the auto did not possess valid and effective driving licence to drive the Auto-rickshaw as he was possessing licence to drive a non-transport auto-rickshaw

and, therefore, that violation of terms and conditions of the policy since material, the Tribunal went wrong in rejecting the said plea and fastening liability on the second respondent – Insurance Company.

12. Learned counsel for the respondents – claimants has drawn the attention of this Court as to the observation made by the Tribunal in paragraph ‘24’ at page ‘10’, wherein the Tribunal recorded the finding that the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning the driving licence, while observing thus:

> “This principle laid down is very much applicable to the facts and circumstances of this case. It is to be mainly considered as to whether the factum of the driver of the vehicle possessing licence for one type of vehicle but found driving another type of vehicle was the main or contributory cause of the accident and if on facts it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver of the vehicle not possessing the requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning the driving licence. It is very important that the driver of the vehicle was having licence to drive non-transport auto and he was taking some passengers, which is actually in violation of the nature of the licence. But, there is no much difference in taking passengers or non-passengers in the vehicle, as it does not affect his capacity to drive the vehicle. Further, such clause is there for the benefit of passengers who may be carried on in the vehicle against any un-toward incident. Therefore, it cannot be said that there was nexus between driving the vehicle taking passengers and the actual cause of accident. Hence, the insurance company will not be discharged from its liability to pay the amounts that may be awarded in the petitions consequent upon the same accident. Further, the second respondent has not placed sufficient evidence with regards to the other defences taken in it’s counter for which, an adverse inference is to be drawn……….”

13. Irrespective of the contentions raised by the respective learned counsel for the appellant and the first respondent in all these appeals, it is profitable to refer to the decisions rendered by the Hon’ble Apex Court in **S. Iyyapan v. united India Insurance Company Limited**, and in **Kulwant Singh v. Oriental Insurance Company Limited**.

14. While resolving an identical issue, the Hon'ble Apex Court in **S. Iyyapan's** case (2 supra) held in paragraph '18' thus:

> "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 judgment is, therefore, liable to be set aside."

15. While reiterating the said principle, the Hon'ble Apex Court, in **Kulwant Singh's** case (3 supra) held in paragraphs '9' and '10' thus:

> "9. We find the judgments relied upon cover the issue in favour of the appellants. In Annappa Irappa Nesaria ((2008) 3 SCC 464), this Court referred to the provisions of Section 2(21) and (23) of the Motor Vehicles Act, 1988, which are definitions of 'light motor vehicle' and 'medium goods vehicle' respectively and the rules prescribing the forms for the licence, i.e. Rule 14 and Form No.4. It was concluded:
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> > "20. 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."
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> 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 :
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> > "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 judgment (Civil Misc. Appeal No.1016 of 2002, order dated 31.10.2008 (Mad) is, therefore, liable to be set aside."

No contrary view has been brought to our notice."

16. In view of the legal principle laid down by the Hon'ble Apex Court as in the above in **S. Iyyapan's** case (2 supra) and in **Kulwant Singh's** case (3 supra), no further probe is required to adjudicate upon the controversy in the instant appeals except holding that there is no merit in the appeals and consequently these appeals stand dismissed.

17. Accordingly, all the appeals are dismissed. There shall be no order as to costs.

18. As a sequel thereto, Miscellaneous Applications, if any, pending in these appeals shall stand closed.

A. SHANKAR NARAYANA, J

Date: 10.04.2015

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