THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.1557 of 2012

JUDGMENT:

Aggrieved by the Award dated 03.02.2012 in M.O.P.No.76 of 2011 passed by the Chairman, M.A.C.T-cum-VI Additional District Judge (FTC)-cum-IV Additional District Judge, Visakhapatnam (for short "the Tribunal"), the 2nd respondent in OP/ New India Assurance Insurance Company Limited preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that on 18.02.2010, when the deceased—Mangaraju (pillion rider) along with 1st respondent returning to home on a motorcycle bearing No.AP 31 TM T/R 9086 from Boyipalem after completion of carpentry work and when they reached near Zoo Park, Animal Rescue Centre Gate, Visakhapatnam at about 3 PM, the 1st respondent drove the vehicle in a rash and negligent manner and lost control over the vehicle and hit the road side iron grill and thereby they fell down on the road and sustained multiple injuries. Immediately they were shifted to King George Hospital, Visakhapatnam and deceased died on 19.02.2010 while undergoing treatment. It is averred that accident was occurred due to the fault of 1st respondent. On these pleas, the claimants filed M.O.P.No.76 of 2011 under Section 166 of Motor Vehicles Act, 1988 (for short “M.V.Act”) and claimed Rs.4,50,000/- as compensation against respondents 1 and 2 who are owner and insurer of motor cycle.

b) R1/owner remained ex-parte.

c) Respondent No.2/Insurance Company filed counter denying all the material averments made in the petition and put the claimants to strict proof of the same. Finally, R2 contended that compensation claimed is highly excessive and exorbitant and thus prayed to dismiss the O.P.

d) During trial, PWs.1 to 2 were examined and Exs.A1 to A5 were marked and Exs.X1 and X2 were exhibited on behalf of claimants. RWs.1 and 2 were examined and Exs.B1 to B4 were marked on behalf of respondents.

e) The Tribunal considering the oral and documentary evidence held that 1st respondent/owner of motor cycle was responsible for the accident and awarded Rs.4,00,000/- with proportionate costs and simple interest at 7.5% p.a. against the respondents 1 and 2 under different heads as follows:

Loss of dependency	Rs. 3,84,000-00
Loss of consortium	Rs. 5,000-00
Love and affection	Rs. 6,000-00
Funeral expenses	Rs. 5,000-00

Total: Rs. 4,00,000-00

Hence, the appeal by Insurance Company.

3) The parties in this appeal are referred as they arrayed before the lower Tribunal.

4) Heard arguments of Sri B.Devanand, learned counsel for appellant/Insurance Company and Sri S.N.K.Mahanthi, learned counsel for R1 to R4/claimants. Notice sent to R5/owner served but no representation on his behalf.

5) Challenging the award imposing liability jointly and severally on the Insurance Company along with owner, learned counsel for appellant/Insurance Company argued that in this case there was a gross infraction of the terms of the policy inasmuch as the owner of the motorcycle had no driving licence to drive motorcycle with gear but had licence to drive only Light Motor Vehicle (Transport) by the date of accident and therefore, the Tribunal considering the evidence placed by the Insurance Company in the form of RW.2 and Exs.B.2 and X.1—driving licence particulars, ought to have exonerated the Insurance Company from the liability. Learned counsel vehemently argued that mere possession of a licence to drive LMV will not enable a person to drive a motorcycle with gear and the Tribunal erred in satisfying itself with the LMV (Transport) driving licence of the owner of the motorcycle. He relied on the decision reported in ***Bajaj Allianz General***

Insurance Co. Ltd., Visakhapatnam Town and District v. Yenni Surya Rao and another[1] to buttress his argument that licence to drive a Light Motor Vehicle cannot be considered as an effective licence to drive a motorcycle with gear. He thus prayed to allow the appeal and exonerate the Insurance Company.

6) Per contra, learned counsel for respondents/claimants argued that the policy in this case was in force and therefore, the Insurance Company cannot repudiate its liability on the plea that the driver had no valid and effective driving licence. He submitted that even assuming that the possession of Light Motor Vehicle driving licence is not equivalent to the driving licence of a motorcycle with gear, still the Court can order the Insurance Company to pay compensation at first and later recover from the owner since it is a case of death of a victim and his policy was in force.

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?"

8a) **POINT**: Accident, involvement of motorcycle bearing No.AP 31 TM T/R 9086 and the death of the deceased are not in dispute. Before Tribunal the appellant/Insurance Company sought to repudiate its liability on the contention that first respondent—owner of the motorcycle had no driving licence to drive the motorcycle with gear but he possessed licence to drive only Light Motor Vehicle (Transport) (LMV) by the date of accident and subsequently he obtained licence to drive the motorcycle with gear which is not germane for fixing the liability on the Insurance Company. The Insurance Company examined RW2 and produced Exs.X1 and B2—driving licence particulars of first respondent to establish its contention. The Tribunal, however, negatived the contention of the Insurance Company on the main observation that though it established that the driver had no valid driving licence to drive the type of vehicle involved in the accident, but it could not establish the fact that driver-cum-owner of the crime vehicle knowing that he had no driving licence, still intentionally drove the vehicle and thereby violated the terms and accordingly fixed joint and several responsibility on Insurance Company along with the owner.

b) In the above context, the evidence of RW2 coupled with Exs.X1 and B2 shows that the first respondent possessed LMV (Transport) driving licence which was valid from 19.06.1991 to 04.07.2019. As rightly contended by the appellant, the first respondent did not possess driving licence to drive the motorcycle with gear by the date of accident. It appears subsequently he obtained said licence also on 25.02.2011 which is not relevant at this juncture.

9) In ***Yenni Surya Rao***'s case (1 supra) learned single Judge opined that licence to drive Light Motor Vehicle cannot

be considered as an effective licence to drive the motorcycle with gear. Going by the said expression, it is clear that first respondent in the OP had no effective licence to drive the type of vehicle involved in the accident i.e. motorcycle. To that extent, it is manifest that there was a breach of terms of Ex.B1—policy. Now, the point is whether on that ground the Insurance Company can be exonerated from its liability.

10) In ***National Insurance Company Limited vs. Swaran Singh and others***[2] the Honourable Apex Court was dealing with wide spectrum of defence pleas of Insurance Companies basing on the deficiencies in driving licences. Such deficiencies are:

a) Fake driving licenses of the driver.

b) Driver not having licence whatsoever.

c) No renewal of driving licence as on the date of accident.

d) License granted for one class or description of vehicle but vehicle involved in accident was of different class or description.

e) *Driver holding only a learner's licence.*

11) The Apex Court after discussing various issues involved in this regard, summarized its findings, from which it is clear that the Insurance Company in order to succeed its defence pleas touching the driving licence issue must establish:

a) *Firstly, the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by a duly licensed driver or one who was not disqualified to driving at the relevant time.*

b) *Secondly, the breach which was committed by the insured was so fundamental as is found to have contributed to the cause of the accident.*

Even upon Insurance Company establishing the above conditions, still the Tribunal can direct that the Insurance Company to pay compensation at first and get reimbursed from the insured.

12) Now, the point is whether the appellant had established the aforesaid two conditions to absolve itself from the liability. The first condition is concerned, the driver and owner of the vehicle is one and the same person i.e. first respondent. Therefore, he fully knows whether he possessed an effective driving licence to drive motorcycle or not. The Insurance Company need not establish this fact because driver is not a third person. In the instant case, it was clear that first respondent knowing well that he had no driving licence to drive the motorcycle with gear drove the vehicle. So, the first contention can be said to be established. However, the second contention is concerned, it must be said that Tribunal failed to establish that non-possession of driving licence to drive the motorcycle with gear was the fundamental cause for the accident. It was not the case where first respondent was

not altogether possessed any licence. He possessed the driving licence to drive LMV (Transport). In those circumstances, the burden will be on the Insurance Company to establish that his non-possession of licence to drive motorcycle with gear was the fundamental cause for the accident. Since the second contention was not established by the Insurance Company, in my considered view, it can be directed to pay compensation at first and later get reimbursed from the insured as the policy was admittedly in force.

13) In the result, this MACMA is partly allowed and while confirming the quantum of compensation awarded by the lower Tribunal in favour of claimants, the appellant/Insurance Company is directed to pay compensation at first and recover the same from the insured i.e. first respondent in the O.P. later. No costs in the appeal.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Dt:12.04.2016
Scs/Murthy

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[1] 2011 (2) ALD 6 (AP)

[2] 2004 ACJ 1 SC