HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1618 OF 2009

JUDGMENT:

Respondent No.2 - M/s. New India Assurance Company Limited, Khammam, in M.V.O.P. No.1198 of 2007, on the file of the Chairman, Motor Accident Claims Tribunal - cum - District Judge, Khammam (for short 'the Tribunal'), preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), challenging the joint and several liability fastened on it by the order and decree, dated 17-09-2008, on the main ground that respondent No.2 did not possess valid and effective driving license to drive the motorcycle, which the Tribunal completely overlooked and awarded a compensation of Rs.35,000/- as against the claim of Rs.1,00,000/- laid under Section 166 of the Act for the injuries sustained by respondent No.1.

2. Respondent No.2 and the appellant herein, who are owner and insurer of motorcycle (Bajaj Boxer CT) bearing registration No.AP 20G 1100, respectively, are respondent Nos.1 and 2, respectively, while respondent No.1 is the petitioner in the MVOP before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the MVOP.

4. The facts that are absolutely necessary for disposal of the present appeal are, on 26-08-2007 at about 8.45 p.m., the petitioner was proceeding on the left side of the road on foot and reached near Pancharatna Rice Mill at Timber Depot Cross-roads, a Bajaj Boxer CT Motorcycle bearing registration No.AP 20G 1100, belonging to respondent No.1 and insured with respondent No.2, driven at high speed in a rash and negligent manner came in opposite direction and hit him, due to which, he fell down and sustained injuries. A crime was also registered against the driver of the motorcycle by Khammam traffic police in crime No.150 of 2007 initially under Section 337 IPC.

i) The petitioner claiming that he was treated in Surya Orthopaedic Nursing Home, Khammam as in-patient and undergone surgical intervention for the fracture of right leg below knee level and steel rods were inserted and spent Rs.25,000/- towards medical and other expenses; that he became disabled; unable to sit; stand or squat as he was hitherto able to do, sought a compensation of Rs.1,00,000/- from both respondents towards general and special damages.

5. Respondent No.1, owner of the motorcycle, filed counter controverting the allegations. He took the plea that since the motorcycle was insured with respondent No.2 and the policy was in force and, therefore, sought to dismiss the claim petition against him on the ground that the insurer was obligated with the duty to indemnify him.

6. Respondent No.2 - Insurer filed counter requiring the petitioner to prove that the driver of the two-wheeler was possessing valid driving license and sought to dismiss the claim petition against it.

7. The Tribunal framed the following three issues basing on the said pleadings.

> " 1. Whether the accident took place due to rash and negligent driving of the accident vehicle, Bajaj Boxer Motorcycle bearing No.AP-20-G-1100 by it's rider?
>
> 2. Whether the petitioner is entitled to claim any compensation? If so, to what amount and from which of the Respondents?
>
> 3. To what relief?"

8. During inquiry, on behalf of the petitioner, he examined himself as PW.1 and no other witness was examined, but marked Exs.A-1 to A-7. On behalf of respondent No.2, RWs.1 and 2 were examined and Exs.B-1 and B-2 were marked.

9. The Tribunal favoured the petitioner by recording a finding on issue No.1, holding that due to rash and negligent driving by the driver of the motorcycle, the accident occurred.

i) The Tribunal, on issue No.2, placing reliance on the decision in **Sudhir Bhujya v. National Insurance Company Limited**[1] and observing that the petitioner failed to examine the Medical Officer to

[1]. 2005 ACJ 509

prove that he sustained fracture of both bones of right let, granted Rs.10,000/- towards treatment and Rs.25,000/- towards the injuries he sustained, making a total of Rs.35,000/-.

ii) In regard to absence of driving license to drive the motorcycle, basing on the evidence of RWs.1 and 2, as the evidence of RW.2, Additional Licensing Authority, Khammam, shows that the driver, who drove the motorcycle, was competent to drive transport vehicle and heavy goods vehicle, and though, stated that with the said license he was not allowed to drive the motorcycle since motorcycle falls under separate category, the Tribunal placing reliance on a decision of a Division Bench of this Court in **United India Insurance Company Limited, Guntur v. Dhullpala Prameela Devi & others**[2] and **United India Insurance Company Limited v. Pappeleti Prasanna Rani and others**[3], rejected the plea taken by the insurer observing that Insurance Company has not made any efforts to examine the driver by summoning him, and thereby held that the insurer and owner are jointly and severally liable to pay compensation and, accordingly, granted Rs.35,000/- as compensation with interest at 7.5% per annum thereon from the date of petition.

10. The aforesaid order is under challenge in the instant appeal preferred by the insurer, mainly contending that the Tribunal was not right in disagreeing with the evidence of RW.2 and the stand taken by

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2. 2007 (4) ALD 495
3. 2008 ACJ 811

the insurer and the absence of valid driving license to drive the motorcycle, which falls under a separate category, the Tribunal ought not to have granted compensation and, therefore, sought to set aside the order and decree, exonerating it from liability to pay compensation.

11. Heard Sri Ravi Shankar Jandhyala, learned standing counsel for the appellant - respondent No.2 and Smt. Vanga Anitha, learned counsel for respondent No.1 - petitioner. Despite service of notice on respondent No.2, owner of the motorcycle, none appears for him.

12. In the present appeal, there is no need to advert to the fact-situation occurring in the instant case except referring to the law declared by the Hon'ble Supreme Court in **Oriental Insurance Company Limited v. Zaharulnisha and others**[4], where, the fact-situation is akin to the one occurring in the instant case. It would suffice to refer to paragraph No.18 of the decision referred supra;

> "18. In the light of the above-settled proposition of law, the appellant - insurance company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullah in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who admittedly had no valid and effective licence to drive the vehicle on the

[4] 2008 ACJ 1928

> day of accident. The scooterist was possessing driving licence of driving HMV and he was driving totally different class of vehicle which act of his is in violation of Section 10(2) of the MV Act."

since admittedly, the driver was not holding licence to drive two wheeler, no liability can be fastened on the insurer.

13. Therefore, the Civil Miscellaneous Appeal is to be allowed and the same is, accordingly, allowed setting aside the order and the decree under challenge in fastening the liability on the insurer and accordingly, exonerated the insurer from its liability to pay compensation.

14. However, as seen from the proceeding sheet dated 28.04.2009 and 19.04.2010, the insurer had deposited half of the amount awarded by the Tribunal and this Court permitted the petitioner to withdraw the same without furnishing any security. In case the petitioner has withdrawn the amount deposited by the insurer, the insurer is at liberty to recover the same from the insured. So far as the balance amount is concerned, the petitioner is at liberty to recover the same from the insured.

15. Accordingly, the Civil Miscellaneous Appeal is allowed setting aside the liability fastened on the insurer alone; however, maintaining the order and decree under challenge in all other respects

including the liability of the insured, as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

December 09, 2016.

MGR/PV