THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.155 of 2009

Date:29.08.2016

Between:

The Branch Manager,
New India Assurance Company Limited,
Sanjeeva Nagar,
R.S. Road, Nandyal,
Kurnool District,
Andhra Pradesh.

... Appellant.

AND

Eeepanagalla Pedda Seethaiah and others.

...Respondents.

The Court made the following :

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JUDGMENT:

This appeal is preferred against order dated 31-07-2004 in W.C.No.36/2004 on the file of Commissioner for Workmen’s Compensation and Assistant Commissioner for Labour, Cuddapah.

2. Respondents 1 to 3 herein submitted application to Commissioner for Workmen’s Compensation and Assistant Commissioner of Labour, Cuddapah contending that deceased-Mastanvalli, while driving Jeep on 30-09-2002 and when it reached T. Kothapalli Village of Mydukur Mandal, he lost control of the vehicle due to heavy rain and that the vehicle turned turtle, sustained severe injuries and died while undergoing treatment at Ranga Simha Hospital, Mydukur. The claimants, being legal representatives of the deceased, are entitled for compensation of Rs.4,00,000/-. Appellant herein i.e., Insurance Company mainly contended that the deceased had no valid and effective driving licence to drive the vehicle on the date of the accident and that Insurance Company is not liable to pay any compensation. On these contentions, lower authority conducted enquiry and on a consideration of evidence and the submissions of both sides, discarded the objection of the Insurance Company and granted compensation of Rs.3,07,776/- besides stamp duty of Rs.616/-. Aggrieved by which, present appeal is preferred.

3. Heard both sides.

4. Advocate for appellant submitted that from evidence on record, the deceased was having only learner’s licence and it cannot be

treated as valid driving licence and the lower authority erred in holding that the learner's licence is also a valid driving licence. It is submitted that Hon'ble Supreme Court in **ALKA OJHA vs. RAJASTHAN PUBLIC SERVICE COMMISSION**[1] held that learner's driving licence is not sufficient to make the insurance company liable as it is not a valid and effective driving licence.

5. In reply and answer to the above arguments, Advocate for claimants submitted that lower authority considering the judgment of Hon'ble Supreme Court in **NATIONAL INSURANCE COMPANY LIMITED vs. SWARAN SINGH**[2]**,** wherein it is held that learner's licence is entitled to drive a vehicle and it is a valid and effective licence and that decision was after considering various judgments of several High Courts, by a Three Judges' Bench of Hon'ble Supreme Court and therefore, the decision relied on by the appellant's counsel has no application.

6. Now the point that would arrive for my consideration in this appeal whether the learner's licence can also to be treated as a valid driving licence?

7. **<u>Point:</u>**-As seen from the record, the very same point was also argued by both sides before the lower authority and the lower authority mainly relying on the decision of Hon'ble Supreme Court in **NATIONAL INSURANCE COMPANY LIMITED vs. SWARAN SINGH**[2] negatived the objection of the Insurance Company and recorded a finding that person holding learner's license is entitled to drive a vehicle, therefore it would come within the purview of 'duly licensed' as it is granted in terms of the provisions of the Act and further held

[1] **(2011) 9 Supreme Court Cases 438**
[2] **2004 ACJ 1**

that the insurance company is liable to pay compensation. As rightly pointed out by Advocate for claimants, the decision of Hon'ble Supreme Court in **NATIONAL INSURANCE COMPANY LIMITED vs. SWARAN SINGH**[2] is a judgment by Three Judges Bench, whereas the Judgment of Supreme Court relied on by the Insurance Company in **ALKA OJHA vs. RJASTHAN PUBLIC SERVCIE COMMISSION**[1] is of a Two Judges' Bench and the judgment of **NATIONAL INSURANCE COMPANY LIMITED vs. SWARAN SINGH**[2] was not referred to by the Supreme Court in **ALKA OJHA vs. RJASTHAN PUBLIC SERVCIE COMMISSION.** In **NATIONAL INSURANCE COMPANY LIMITED vs. SWARAN SINGH,** the Hon'ble Supreme Court while dealing with the learner's licence aspect held that a person holding learner's licence would also come within the purview of 'duly licenced' and unless there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence the same would run counter to the provisions of Section 149 (2) of Motor Vehicles Act. It observed as follows:-

> *"Motor Vehicles Act 1988 provides for grant of learner's license. [See Section 4 (3), 7 (2), Section 10 (2) and Section 14]. A learner's license is, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that a vehicle when being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not duly licensed resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that the said person holding a learner's licence is not entitled to drive vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149 (2) of the Act. It further observed that it is now well settled principle of law that rules validly framed become part of the statute if such rule are therefore required to be read as part of the main enactment. It is also well settled principle of law that for the interpretation of statute an attempt must be made to give effect to all provisions under the rule, if no provision should be considered as surplusage."*

8. In view of the above referred decision of Hon'ble Supreme Court, the objection of the Insurance Company with regard to learner's licence is not tenable and the lower authority rightly discarded the objection. As seen from the decision of Hon'ble Supreme Court in **NATIONAL INSURANCE COMPANY LIMITED vs. SWARAN SINGH**[2], Supreme Court clearly held that if the vehicle at the time of accident was driven by a person having a learner's licence, the Insurance Companies would be liable to satisfy the decree. In view of the specific observation of the Hon'ble Supreme Court, the Insurance Company cannot contend that they have no liability in view of the fact that the deceased was holding only learner's licence.

9. For these reasons, I am of the view that lower authority has rightly granted compensation fastening liability on the Insurance Company and I do not find any grounds to interfere with the same, therefore the appeal is devoid of merits and liable to be dismissed.

10. Accordingly, appeal is dismissed as devoid of merits and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed. No costs.

JUSTICE S. RAVI KUMAR

Date:29.08.2016
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