HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1428 OF 2009

JUDGMENT:

Respondent No.2 - M/s. New India Assurance Company Limited is the present appellant.

2. Aggrieved over the order and decree, dated 29-01-2008, in M.V.O.P. No.871 of 2006, passed by the learned Chairman, Motor Accident Claims Tribunal - cum - I Additional District Judge, Guntur (for short 'the Tribunal'), whereby and where-under, a compensation of Rs.2,00,000/- was granted as against the claim of Rs.2,25,000/- laid by the petitioners under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') for the death of one Modadugu Jagga Rao in a road accident, respondent No.2 preferred the instant appeal under Section 173 of the Act, mainly on the ground that the driver of the tractor and trailer bearing registration Nos.AP 27G 4714 and 4715, respectively, was not holding a valid and effective driving license, and that the Tribunal went wrong in fastening joint and several liability on it along with insured.

3. Respondent No.5 and the appellant herein, who are owner and insurer of tractor and trailer bearing registration Nos.AP 27G 4714 and 4715, are respondent

Nos.1 and 2, respectively, while respondent Nos.1 to 4 are the petitioners in MVOP before the Tribunal.

4. For the sake of convenience, the parties herein are referred to as they were arrayed in the MVOP before the Tribunal.

5. Basic facts needed for disposal of the present appeal are, that on 24-06-2006, the said M. Jagga Rao was proceeding on his scooter bearing registration No.AP 7E 2042 from Guntur to Chilakaluripet, and at about 3.00 p.m., when he reached near Market Yard on National Highway No.5, driver of tractor and trailer bearing registration Nos.AP 27G 4714 and 4715, respectively, driven in a rash and negligent manner at high speed and suddenly turned the vehicle towards bypass road and dashed the scooter which resulted in the said Jagga Rao sustaining fatal injuries. He was immediately shifted to Government Hospital, Chilakaluripet, where he succumbed to injuries while undergoing treatment. Hence, the petitioners laid the claim for Rs.2,25,000/- under Section 163-A of the Act against respondent Nos.1 and 2.

6. Both the respondents filed their counters.

i) Respondent No.1 completely denied the involvement of the tractor and trailer stating that such vehicle was not in use due to mechanical defect and kept it idle and, therefore, he did not engage any driver to drive the vehicle and sought to dismiss the claim petition.

ii) In its counter, respondent No.2 took a specific plea that the driver of the tractor and trailer was not holding a valid driving license at the time of accident and, finally, sought to dismiss the claim petition.

7. Basing on the said pleadings, the following issues were framed about the responsibility for the accident.

"1. Whether the accident took place due to negligent driving of the driver of the tractor bearing No.AP-27G-4714 and trailor AP-27G-4715?

2. Whether the petitioners are entitled for the compensation, if so, to what amount and from which of the respondents?

3. To what relief?"

8. During inquiry before the Tribunal, petitioner No.1 examined herself as PW.1 and one R. Narasimha Rao as PW.2 and marked Exs.A-1 to A-5. On behalf of respondents, RWS.1 to 3 were examined and Exs.B-1 and B-2 were marked. Besides the documents marked by both parties, Exs.X-1 to X-4 were also marked through RWs.2 and 3.

9. The Tribunal recorded a finding on issue No.1 in favour of the petitioners. On issue No.2, with regard to

plea raised by the Insurance Company that the driver of the tractor and trailer was not holding valid driving license, the Tribunal recorded in paragraph Nos.14 and 15 of the order under challenge thus:

> "14. R.W.1 is the Senior Assistant of R2 company. He admitted in his cross-examination, tractor and trailer is light motor vehicle. R.W.2 is the person who is working in R.T.O. Office Guntur. He admitted in his cross-examination the vehicle is light motor vehicle. He stated, it is true badge is not necessary to drive L.M.V. vehicle. He further admitted the tractor and trailor weight is below 7500 Kgs. R.W.3 is J. Vijaya Durga working as Junior Assistant in Narasaraopet RTC office. She admitted in her cross-examination Prabhudas is permitted to drive light motor vehicles. Tractor can be used either as public purpose or private purpose and the vehicles below the weight of 7500 Kgs are come within the purview of light motor vehicle.
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> 15. A perusal of the evidence of R.Ws.1 to 3 made it is clear, tractor and trailor are coming within the purview of light motor vehicle as its unladen weight is 7500 Kgs. R.W.3 admitted that the tractor can be used either as public purpose or private purpose. Admittedly the driver who drove the tractor, possessed licence to drive L.M.V. non-transport vehicles. The tractor was not used at the time of the accident for transport purpose. Accident occurred when the person who was driving the tractor bearing No.AP-27G-4714 and trailor AP-27G-4715, took a turn suddenly towards Donka without following traffic rules and regulations."

Thereafter, placing reliance on the decisions in **New India Assurance Company Limited v. Bhimavarapu Prathap**

and others[1] and **New India Assurance Company Limited v. Muna Maya Basant and another**[2] and other decisions referred to by the insurer, recorded a finding that since the driver of the accident vehicle was holding license to drive light motor vehicles, insurance company is also liable to pay compensation, as no violation can be viewed, and then proceeded with determination of compensation taking the age of the deceased as 45 years, income at Rs.50/- per day, deducting 1/3rd there-from towards personal expenses, multiplying the reminder with '15' arrived at Rs.1,80,000/-. Besides the same, conventional sums at Rs.5,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses and Rs.13,000/- towards loss of estate and, thus, making a total sum of Rs.2,00,000/- was granted as compensation with interest at 7.5% per annum thereon.

10. The aforesaid order is under challenge in the instant appeal preferred by respondent No.2, mainly on the ground that the Tribunal has not properly appreciated the evidence of RWs.1 to 3 and Exs.B-1 and B-2 and Ex.X-1, and that the fact-situation occurring in the judgment of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Kusum Rai and others**[3] is not applicable, and that the Tribunal failed to look into the

provisions of Section 3 of the Act, which mandate that a person driving a transport vehicle must possess transport license to drive such vehicle.

11. Heard Sri Naresh Byrapaneni, learned standing counsel for the appellant - respondent No.2, and Sri B. Parameswara Rao, learned counsel for respondent Nos.1 to 4 - petitioners, and also Sri T. Sricharan, learned counsel for respondent No.5 - respondent No.1.

12. Perused the order and the material on record, both, oral and documentary.

13. The learned counsel for the appellant would submit that the order under challenge in paragraph Nos.14 and 15 would clearly shows that the driver of the tractor and trailer, who drove it at the relevant time, only possessed license to drive light motor vehicle (LMV) non-transport, but not the transport vehicle, as there is no endorsement to drive LMV transport vehicle in his license, and though, the same has been affirmed by RWs.1 to 3, more particularly, RW.3, still, the Tribunal overlooked the fact and fastened liability on the Insurance Company. It is his submission that even the decision in **S. Iyyapan v. United India Insurance Company Limited and another**[4] is applied, the Insurance Company be given

liberty to recover the amount by depositing the compensation amount initially. Of course, the learned counsel for respondent Nos.1 to 4 not objected to such submission.

14. The observations made by the Hon'ble Supreme Court in

S. Iyyapan's Case (Supra 4), in paragraph Nos.16 to 19 are thus:

> "16. In the case of ***National Insurance Co. Ltd.*** *v.* ***Annappa Irappa Nesaria alias Nesaragi and Ors.*** [2008 (3) SCC 464], the vehicle involved in the accident was a matador having a goods carriage permit and was insured with the insurance company. An issue was raised that 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 on the ground that there is violation of terms and conditions of the policy the insurance company cannot be permitted to contend that it has no liability. This Court after considering the relevant provisions of the Act and definition and meaning of light goods carriage, light motor vehicles, heavy goods vehicles, finally came to conclusion that the driver, who was holding the licence duly granted to drive light motor vehicle, was entitled to drive the light passenger carriage vehicle, namely, the matador. This Court observed as under:
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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 authorized to drive a light goods vehicle as well.

17. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 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 travelling 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.

18. Reading the provisions 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 has 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 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but

> before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.
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> 19. 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."

However, the Hon'ble Supreme Court while setting aside the judgment of the High Court, held that the insurer is liable to pay compensation so awarded to the dependants of the victim of the fatal accident.

15. Keeping in view, the law declared by the Hon'ble Supreme Court in paragraph No.18, the order and decree under challenge is modified to the extent of directing the appellant - Insurance company to deposit the compensation amount initially and recover the same from the owner of the vehicle, respondent No.1 in the MVOP

before the Tribunal.

16. Accordingly, the appeal is allowed modifying the order and decree, dated 29-01-2008, in M.V.O.P. No.871 of 2006, passed by the Tribunal to the extent of directing respondent No.2 - M/s. New India Assurance Company Limited to deposit the compensation amount initially and to recover the same from owner of the tractor and trailer, respondent No.1. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 16, 2016.
Mgr

[1]. 2006 ACJ 1076

[2]. 2001 ACJ 940

[3]. 2006 ACJ 1336

[4]. AIR 2013 (SC) 2262