HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2373 OF 2009

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred by the National Insurance Company Limited, Vijayawada, questioning the order and the decree dated 11.07.2008, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - III Additional District Judge (Fast Track Court), Khammam (for short 'Tribunal'), on the main ground that the Tribunal mulcted liability on it, though, the driver of the auto-rickshaw bearing No.AP-16-W-7916 that involved in the accident was not holding valid subsisting driving licence at the time of accident and thereby committed an error, and granted Rs.2,00,000/- as compensation for the death of Smt. Khasim Bee on 01.06.2002.

2. Heard Sri Katta Laxmi Prasad, learned Standing Counsel for the Insurance Company (appellant), and Sri Yellanki Pulla Rao, learned counsel for respondent No.1 - petitioner (claimant).

3. Despite sending notice to respondent No.2, owner of the auto-rickshaw bearing No.AP-16-W-7916 Jeep that involved in the accident, to the address provided by him, it was not served. However, he remained *ex parte* even before the Tribunal and suffered decree, as such, his absence is of no consequence to decide the controversy in this appeal.

4. The fact-situation is not in dispute between the parties. The only dispute is that the driver of the auto-rickshaw, which involved in the accident, was not holding transport vehicle licence and he was holding only non-transport vehicle as could be proved by the insurance company through the evidence of RW.2. It has been sufficiently described in paragraph No.12 of the order under challenge, as such, it is suffice, if paragraph No.12 is extracted, instead of referring to the evidence and again projecting the contentions raised by the learned counsel herein, which reads thus:

> "R-2 submitted that the auto drive (*Sic.* driver) has no valid driving licence at the time of accident, and that it is violation of policy terms and conditions. In order to establish the same, R-2 adduced evidence RW-1 and 2 and filed Ex.B.1 policy and Ex.B.2 D.L. Extract. RW-1 deposed that R-2 company issued insurance and the same was in force by the date of accident. He also deposed that the driver of the auto, R-1 has no valid driving licence to drive crime auto, which is transport auto, and the R-1 has non-transport D.L. RW-2 deposed that the driver of the crime auto, by name, Ananthoju Narasimha Rao, was authorized to drive non-transport auto-rickshaw only, by the date of accident, but, there is no specific endorsement of transport. The evidence of RW-2 coupled with Ex.B.2, if read harmoniously, it discloses that the driver of the crime auto A. Narasimha Rao, has no valid driving licence to drive the crime auto, which is passengers transport auto, at the time of accident. R-1 being the driver-

cum-owner of the crime auto, has violated the terms and conditions of policy. R-2 also denied the ownership of R-1 over the crime auto and also insurance policy of the crime vehicle, but, itself filed Ex.B.1 policy copy. Ex.B.1 clearly shows that R-1 is the owner of the crime auto and insured the same with R-2, and the insurance policy was in force by the date of accident. Hence, in view of the above said violation, R-1 and R-2 are jointly and severally liable to pay the compensation to the petitioner, R-2 is entitled to recover the deposited amount, from R-1."

5. The evidence of RW.2 is clear and shows what has been observed by the Tribunal was based on the evidence of RW.2. Thus, so far as the appellant being insurer of the auto-rickshaw involved in the accident is concerned, there is no dispute.

6. RW.2 is one S. Pavan Kumar, from R.T.A. Office. He was examined by the insurer. Through RW.2 the driving licence extract relating to the driver of the autorickshaw was marked. The endorsement marked as Ex.B-2 is a reply to the questionnaire sent by the insurer, as could be gathered from the contents therein dated 14.10.2003 and the endorsement dated 14.10.2003, marked through RW.1 on 20.07.2007. It shows that the driver of the auto-rickshaw that involved in the accident was possessing driving licence to drive Light Motor Vehicle (non-transport) only and it was valid only up to 28.02.2022 from 1.03.2002. Admittedly, the driver of the auto-rickshaw was not possessing driving licence to drive the same which

is a transport vehicle by its very nature and that has been sought to be construed as fundamental violation of the terms and conditions of the insurance policy and to exonerate the insurer from its liability by setting aside the order and decree passed by the Tribunal. Such a situation is settled by the Hon'ble Supreme Court in **S. Iyyapan v. United India Insurance Company Limited[1].** Instead of referring to the details therein, it would suffice to extract paragraph Nos.14 to 17 therein, which read thus:

> "14. In the case of *National Insurance Co. Ltd. v. Kusum Rai and Others* [(2006) 4 SCC 250], the respondent was the owner of a jeep which was admittedly used as a taxi and thus a commercial vehicle. One Ram Lal was working as a Khalasi in the said taxi and used to drive the vehicle sometimes. He had a driving licence to drive light motor vehicle. The taxi met with an accident resulting in the death of a minor girl. One of the issues raised was as to whether the driver of the said jeep was having a valid and effective driving licence. The Tribunal relying on the decision of this Court in *New India Assurance Co. v. Kamla* [(2001) 4 SCC 342] held that the Insurance Company cannot get rid of its third party liability. It was further held that the Insurance Company can recover this amount from the owner of the vehicle. Appeal preferred by the Insurance Company was dismissed by the High Court. In appeal before this Court, the insurance company relying upon the decision in *Oriental Insurance Co. Ltd. v. Nanjappan*, [2004 (13) SCC 224] argued that the

[1](2013) 7 SCC 62

awarded amount may be paid and be recovered from the owner of the vehicle. The Insurance Company moved this Court in appeal against the judgment of the High Court which was dismissed.

15. In *National Insurance Company Ltd. v. Annappa Irappa Nesaria* [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: (SCC p. 468, para 20)

"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."

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

17. 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.
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> 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."

Thus, the law laid down by the Hon'ble Supreme Court squarely applies to the situation occurring in the instant case. Therefore, there is no merit in the present appeal.

7. The learned counsel for the petitioner sought to enhance the compensation on the ground that the Tribunal though, arrived at Rs.2,35,400/-, restricted it to the claim of Rs.2,00,000/- with interest at 7.5% per annum. Since no appeal or cross-objection is preferred by the petitioner, certainly this submission cannot be accepted.

8. Therefore, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

December 28, 2016.

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