HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2322 OF 2005

JUDGMENT:

Respondent No.2 - M/s. Oriental Insurance Company Limited preferred the instant appeal, aggrieved by the order and decree, dated 11-07-2003, passed by the learned Chairman, Motor Accident Claims Tribunal - cum - District Judge, Vizianagaram (for short 'the Tribunal') in M.O.P. No.144 of 2000, awarding compensation of Rs.55,000/- against it and respondent No.1 on the ground that it is not liable to pay any compensation as respondent No.1 possessed a learners' license on the date of accident.

2. The appellant and respondent No.2 herein, who are insurer and owner/driver of Hero Honda two wheeler motor cycle bearing registration No. AP 35A 9190, respectively, are respondent Nos.1 and 2, respectively, in M.O.P. before the Tribunal, while respondent Nos.3 and 5, who are owner and insurer of Auto-rickshaw bearing registration No.AP 35T 3413, respectively, are arrayed as such, respondent No.4 as respondent No.4 and respondent No.1 herein is the petitioner

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

before the Tribunal.

4. The facts, in brief, are that on 06-07-1999 at about 10.30 a.m., the petitioner, who is resident of Chinamorangi village, Jiyyammavalasa Mandal of Vizianagaram District, along with others was travelling in an auto-rickshaw bearing registration No.AP 35T 3413 from the said village to Jiyyammavalasa, and when it reached near Joguladumma village, respondent No.1 riding the Hero Honda Motor Cycle bearing registration No.AP 35A 9190 in a rash and negligent manner came and hit the auto-rickshaw, due to which, the petitioner received injuries. Immediately, he was shifted to Community Hospital, Parvathipuram, where he took treatment. Claiming that he incurred medical expenditure, he sought Rs.1,50,000/- as compensation against respondent Nos.1 to 5 jointly and severally.

5. Respondent Nos.1, 3 and 4 remained *ex parte* before the Tribunal.

6. Respondent No.2, who is insurer of Hero Honda Motor Cycle filed counter opposing the claim. In the additional counter, it is contended that it is not liable to pay any compensation as respondent No.1 was having learning license.

7. Respondent No.5, who is insurer of auto-

rickshaw, filed counter opposing the claim. It contended that the accident had occurred due to rash and negligent driving of respondent No.1 only and, therefore, it is not liable to pay any compensation.

8. Based on the pleadings, the Tribunal framed three issues in the direction of fixing liability and determining compensation, to which, the petitioner entitled.

9. During inquiry before the Tribunal, on behalf of the petitioner, he examined himself as PW.1, besides examining one Dr.K. V. Murali Mohan as PW.2 and marked Exs.A-1 to A-5 to substantiate his claim. On behalf of respondent No.2, an official from its local branch was examined as RW.1, besides marking endorsement of Motor Vehicle Inspector and copy of insurance policy as Exs.B-1 and B-2. No evidence, either oral or documentary, was adduced on behalf of respondent No.5.

10. The Tribunal on appraisal of evidence held issue No.1 in favour of the petitioner recording an observation that the accident had not occurred due to rash and negligent driving of the driver of auto-rickshaw bearing registration No.AP 35T 3413, and that the accident had occurred only on account of rash and negligent driving of the driver of Hero Honda motor cycle

bearing registration No.AP 35A 9190, who is respondent No.1 in O.P. and its insurer - respondent No.2. Respondent No.2 being the insurer of the motor cycle preferred the instant appeal. On issue No.2, the Tribunal having elaborated on the aspect of determination of compensation in the light of the evidence adduced by the petitioner, held that the petitioner is entitled to Rs.55,000/- towards compensation for the injuries he sustained. With regard to liability to pay compensation amount, the Tribunal having referred to the respective contentions and examining the evidence of RW.1, however, not agreeing with the submission of the learned counsel for respondent No.2 – Insurance Company that no liability can be fastened on it when driver holds a learner's driving license, which argument was advanced placing reliance on the decision of a Single Judge of this Court in **V.V. Somani v. I. Annapurna**[1], placing reliance on the decision of yet another Single Judge of this Court in **Manager, National Insurance Company Limited v. Koya Ratnam**[2], accepted initial liability to pay compensation by the Insurance Company to third parties with a liberty to recover the amount paid to claimants from the owner of the vehicle and referring to Ex.B-2 policy, has given such a direction to respondent No.2, while dismissing the claim petition against respondent Nos.3 to 5. The Tribunal has also granted interest at 9% per annum.

11. It is the aforesaid order which is under challenge in the instant appeal preferred by respondent No.2, mainly contending in the grounds that since driver of the Hero Honda motor vehicle, which was insured with it, was possessing only learners license, no liability can be fastened on it, even to pay compensation initially and recover the same from the owner.

12. Heard Mrs. S.A.V. Ratnam, learned standing counsel for the appellant – respondent No.2, Sri Gudapati Venkateswara Rao, learned counsel for respondent No.1, and Sri G. Chandra Sekhara Rao, learned counsel for respondent Nos.2 and 4. As per cause title of grounds of appeal, respondent Nos.3 and 5 are not necessary parties.

13. Perused the order and the evidence on record, both, oral and documentary, let in by the parties.

14. There is absolutely no dispute between the contesting parties herein that the driver of the Hero Honda Motor Cycle, at the relevant time, only possessed a learner's driving license, but not a regular license. Though, the Tribunal has given a direction to the appellant - respondent No.2 to initially pay the amount and recover the same from the owner, and that direction is now

challenged in the instant appeal, in view of the principle laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Swaran Singh and Others**[3], the appellant herein requests the Court to exonerate its liability. Since the Hon'ble Supreme Court in the context of assessing liability, where driver holds a learner's driving license laid down the guiding principles in paragraph No.106 thus:

> "106. The summary of our findings to the various issues as raised in these petitions are as follows:
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> (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.
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> (ii) Insurer is entitled to raise a defence in a claim petition filed under Section163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section149(2)(a)(ii) of the said Act.
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> (iii) The breach of policy condition, e.g. disqualification of driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving

licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that 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 vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time, (iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a 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.

(ix) The claims tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and Se award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in

> accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.
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> (xi) The provisions contained in Sub-section (4) with proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by, relegating them to the remedy before, regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.",

there is no merit in the instant appeal and, the same is liable to be dismissed.

16. In the result, the 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 of.

A. SHANKAR NARAYANA J.

March 28, 2016.
Mgr

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[1]. 2003 (1) ALD 716
[2]. 2002 (1) Alt 266
[3]. AIR 2004 SC 1531