HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.2374 of 2011

JUDGMENT:

Challenging the Award dt.11.04.2011 in O.P.No.312 of 2009 passed by the Chairman, MACT-cum-II Additional District Judge, Madanapalle (for short "the Tribunal"), directing the Insurance Company to pay compensation at the first instance to the LRs of the deceased who died in a motor vehicle accident and then recover from the insured, the Insurance Company preferred the instant appeal.

2) The parties in this appeal are referred as they were arrayed before the lower Tribunal.

3) The factual matrix in brief is that one Reddy Basha while proceeding on a Suzuki Motorcycle bearing No.AP 03 T 5363 along with some others on Punganur – Bayakonda road, an auto bearing No.AP 03 U 8951 came in the opposite direction and hit their motorcycle causing injuries to them. Subsequently, the said Reddy Basha died on 15.11.2006 while undergoing treatment in SVRR Hospital, Tirupati. The claimants who are the mother, wife and children of the deceased filed O.P.No.312 pf 2009 claiming compensation of Rs.4,00,000/- against respondents 1 and 2 in the O.P, who are the owner and insurer of the offending auto.

a) The 1st respondent remained *ex parte*.

b) The 2nd respondent/Insurance Company contested the O.P on the main plank of argument that the driver of the auto had no valid and effective driving licence inasmuch as he possessed licence to drive LMV (AR) (Non-transport vehicle) whereas the auto was a transport vehicle. Though the Tribunal agreed with the contention, however, directed it to pay compensation at the first instance and then recover from the insured.

Hence, the appeal by Insurance Company.

4) Heard arguments of Sri Srinivasa Rao Vutla, learned counsel appearing for Smt.A.Malathi, learned counsel for appellant/Insurance Company and Sri N.Pramod, learned counsel for R.1 to R.6/claimants. Though notice to R.7 was served but there is no representation on his behalf.

5) Learned counsel for appellant would vehemently contend that the evidence produced by the Insurance Company before the lower Tribunal would clinchingly establish that the driver had no valid and effective driving licence to drive the category of the vehicle involved in the accident and having agreed with the said contention, the Tribunal ought to have totally exonerated the Insurance Company from the liability instead of pinning it down by a pay and recovery order. He thus prayed to allow the appeal and exonerate the Insurance Company from the liability. He relied upon the decision reported in ***New India Assurance Company Limited vs. Prabhu Lal***[1].

6) In oppugnation, learned counsel for respondents/claimants while supporting the Award argued that since the claim is in respect of the death

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[1] (2008) 1 Supreme Court Cases 696

of a third party with reference to the crime vehicle, the lower Tribunal rightly ordered the Insurance Company to pay the compensation at first and then recover the same from the insured and there was no illegality in the said order. He relied upon the decision reported in ***Bajaj Allianz General Insurance Co. Ltd. vs. Jamuna***[2].

7) The point for determination in this appeal is:

"Whether the Tribunal was right in directing the Insurance Company to pay the compensation amount and then recover the same from the insured?"

8) **POINT**: The accident, involvement of the motorcycle and auto bearing No. No.AP 03 U 8951 and lorry bearing No.AP 03 T 5363 and death of deceased are all admitted facts. The main plank of argument of the Insurance Company before the lower Tribunal as well as in this appeal is that the auto was a transport vehicle whereas its driver, on the date of accident, had licence under Ex.B.2—driving licence to drive LMV (AR) (Non-Transport). That the driver had licence to drive LMV (AR) (Non-Transport) was not controverted by the respondents/claimants or the 1st respondent who in fact remained *ex parte* and even the lower Tribunal also accepted this contention. Thus there is no demur that the driver had driving licence to drive LMV (AR) (Non-Transport) by the date of accident and it is also not in dispute that the auto in question was a transport vehicle. Therefore, there was a breach of terms of the policy in respect of driving licence. However, the issue is whether on that count,

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[2] LAWS (APH)-2014-7-187

the Insurance Company could be exonerated totally or whether the Tribunal was right in fastening liability on it by directing the Insurance Company to pay compensation and recover the same from the insured. The law is no more *res integra* and in ***National Insurance Company Limited vs. Swaran Singh***[3] the Three Judges Bench of the Apex Court has dealt with a wide spectrum of defence pleas of Insurance Companies basing on the deficiencies in driving licences. Such deficiencies are:

a) Fake driving licenses of the driver.
b) Driver not having licence whatsoever.
c) No renewal of driving licence as on the date of accident.
d) License granted for one class or description of vehicle but vehicle involved in accident was of different class or description.
e) Driver holding only a learner's licence.

The Apex Court after discussing various issues involved in this regard, summarized its findings thus:

i) 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.

ii) 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 wherefore would be on them.

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[3] AIR 2004 SC 1531

iii) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid license 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 section 149(2) of the Act.

iv) 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 fulfill the requirements of law or not will have to be determined in each case.

v) 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.

9) From the above summarization, it is clear that an Insurance Company in order to succeed in its defence pleas touching the driving licence issues must:

a) Firstly, establish 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 vehicle by a duly licensed driver or one who was not disqualified to driving at the relevant time.
b) Secondly, the breach which was committed by the insured was so fundamental as is found to have contributed to the cause of the accident.

Even upon establishing the above conditions by the Insurance Company, 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.

a) In the instant case, except establishing that the driver had no valid and effective driving licence to drive the category of the vehicle involved in the accident, the Insurance Company could not further prove the other conditions i.e, the owner had knowingly and consciously allowed such a driver to drive the vehicle and that the breach was so fundamental that had contributed to the cause of accident. In that view of the matter, the Insurance Company cannot repudiate its liability towards the claim of a third party, as in the instant case the deceased was a third party with reference to the crime vehicle. Therefore, the lower Tribunal was justified in passing the pay and recovery order.

b) In the similar circumstances, in ***Korra Jamuna***'s case (2 supra) cited by the respondents/claimants, a learned single Judge of this High Court directed the appellant/Insurance Company to pay compensation at the first instance and then to recover the same from the insured.

c) Coming to the decision in ***Prabhu Lal***'s case (1 supra) relied upon by the appellant, it must be said that the said decision would not advance its cause. That was a case relating to the claim of the insured himself before the District Consumer Forum. Holding that the driver, who was none other than the own brother of the insured, had no valid and effective driving licence, the District Consumer Forum and ultimately the Apex Court dismissed the claim. On facts, it was a claim by the insured himself and not a third party as in the instant case. Therefore, the principle enunciated in ***Swaran Singh***'s case (3 supra) would apply to the present case on hand.

7) In the result, this appeal filed by the Insurance Company is dismissed with costs by confirming the Award passed by the lower Tribunal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 09.09.2016
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