HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.3142 OF 2012 AND 2176 OF 2016

COMMON JUDGMENT:

Both these appeals arise out of one and the same order and decree dated 09.03.2012 passed in O.P. No.2101 of 2009 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court at Hyderabad (for short, 'the Tribunal').

2. M.A.C.M.A. No.3142 of 2012 (former appeal) is preferred by the IFFCO-TOKIO General Insurance Company Limited, represented by its Divisional Manager, Punjagutta, Hyderabad, who is respondent No.2 in the original petition, aggrieved over the aforesaid order mainly on two grounds. First, that respondent No.4 herein-owner of the accident vehicle, by suppressing the fact of the two-wheeler met with an accident, approached the insurer on 03.08.2009 and obtained insurance policy with retrospective effect from 28.07.2009, for a period of one year, which would expire on the mid-night of 27.07.2009 and, thus, played fraud so as to avoid payment of compensation between the claimants and to thrust liability on the insurer deliberately. The second ground of attack is that the driver of the two-wheeler was not possessing valid and effective driving licence at the time when the accident did take place on 01.08.2009. The appellant-insurer, complaining that the Tribunal, somehow, did not properly appreciate these two aspects and went wrong in recording wrong findings thereon, mulcted liability on it, sought to set aside the order and decree and exonerate the insurer from its liability.

3. M.A.C.M.A. No.2176 of 2016 (latter appeal) is preferred by the claimants requesting to enhance the compensation by granting Rs.1,47,000/- additionally on the ground that the claim was laid for Rs.5,00,000/- under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one J.Venkataiah alias Venkaiah (deceased), who is father of the claimants, whereas, the Tribunal awarded compensation of Rs.3,53,000/- only.

4. Thus, both the appeals are preferred under Section 173 of the Act, claiming the aforesaid reliefs.

5. The appellant in the former appeal (respondent No.2-insurer in the latter appeal) is respondent No.2, while respondent Nos.1 to 3 in the former appeal (appellant Nos.1 to 3 in the latter appeal) are petitioner Nos.1 to 3 and respondent No.4-owner in the former appeal (respondent No.1 in the latter appeal) is respondent No.1 in the original petition.

6. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

7. The petitioners in the aforesaid original petition are the children of the deceased. They laid the claim under Section 163-A of the Act claiming compensation of Rs.5,00,000/-. Their case is that the deceased, who was working as monthly contract sweeper in the limits of Kukatpally Municipality, engaged to transport garbage in a rickshaw, earning Rs.3,000/- per month, on 01.08.2009 at about 10-30 p.m., when he was transporting the garbage, loaded in the rickshaw and was crossing the road in front of IDA East Gate, Balanagar, a rider of the Hero Honda Passion Pro motorcycle bearing registration No.AP 09GE-T/R-9603, proceeding towards Balanagar,

hit him from behind, resulting in head injury and he was immediately shifted to Gandhi Hospital, Secunderabad, where he succumbed to injuries at 00-30 hours. The Station House Officer, Balanagar Police Station, Cyberabad, registered a case in Crime No.217 of 2009 for the offence punishable under Section 304-A IPC, against the rider of two-wheeler and observed the usual formalities of laying charge sheet.

8. Respondent No.1-owner of the two-wheeler, though, served with notice, did not chose to participate in the enquiry and, therefore, he was set *ex parte*.

9. Respondent No.2-Insurance Company has opposed the claim.

10. Basing on the pleadings of rival parties, the Tribunal framed the following three issues:

> "1. Whether the deceased died in the accident on 01-8-2009 due to the rash and negligent driving of the driver of the Hero Honda Passion Pro Motor cycle bearing No. AP 09GE-T/R-9603?
>
> 2. Whether the petitioners are entitled to any compensation? If so, to what amount and from whom?
>
> 3. To what relief?"

11. During enquiry, petitioner No.1 examined himself as P.W.1 and an eyewitness to the occurrence as P.W.2 and marked Exs.A.1 to A.6; whereas, on behalf of respondent No.2-insurer, its official from the local branch was examined as R.W.1 and marked Exs.B.1 to B.3.

12. The Tribunal, basing on the evidence of P.W.2 supported by the documentary evidence through Exs.A.1, A.2 and A.5, which are certified

copies of F.I.R., charge sheet and Motor Vehicles Inspector's report, respectively, recorded finding that due to the rash and negligent driving of the rider of two-wheeler, the accident had taken place.

13. On issue No.2, the Tribunal, on appraisal of evidence on record, fixed the age of the deceased as 48 years basing on the entries in Exs.A.3 and A.4, which are inquest and postmortem reports. With regard to the income, the Tribunal, basing on Ex.A.6-salary certificate of the deceased issued by the President and Secretary of Sri Jagadamba (Lambadi) Society, Kukatpally Area, showing that they used to pay Rs.3,250/- per month, considered the said amount as the monthly income and deducted 1/3rd towards personal living expenses of the deceased. As regards multiplier factor, as per the entry in the Schedule-II to Section 163-A of the Act, applied '13' and worked out the loss of dependency at Rs.3,38,000/-. Besides the same, the Tribunal has also granted Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. Thus, a total compensation of Rs.3,53,000/- was awarded apportioning the same amongst all the three petitioners equally.

14. The Tribunal has discussed both the aforesaid grounds agitated by the insurer before it. Concerning the suppression of material fact of taking place of accident prior to filing application form for issue of insurance policy, the Tribunal places reliance on a decision of this Court in **Gandham Nagesh v. Pokala Nageswara Rao and others**[1], wherein it was held that the insurer was not liable as the insured suppressed the material fact of taking place of accident an hour before he approached for obtaining insurance policy. The Tribunal also considered the ruling rendered by this

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[1] 1990 ACJ 257

Court relied on by the learned counsel for the petitioners in **Madhukuri Raghu Ram Murthy and another v. Koyyada Sakku Bai and others**[2] for the proposition that the insurance company is liable to pay compensation based on the operation time mentioned in the insurance policy and also the ruling of the Hon'ble Supreme Court in **New India Assurance Company Limited v. Rula and others**[3] for the proposition that the payment of premium is not concern of third party and the contract of insurance contemplates benefit to a third party, who is not a party to the contract, but is protected by it and the insurance company is not exempted from third party liability if the cheque towards premium was dishonoured and the insurance policy was cancelled after accrual of liability. The Tribunal, somehow, carried away by the period of coverage since it was mentioned in the insurance policy Ex.B.1 showing its validity from 28.07.2009 at 5-30 hours to the mid-night of 27.07.2010, given precedence to the said recording public recital in Ex.B.1, rather than to the date of obtaining licence by paying the premium on 03.08.2009, despite the admitted fact that the accident did take place on 01.08.2009 itself. Perhaps, the Tribunal, under the impression that when once contract was entered into agreeing to the terms and conditions by both parties, it binds parties and that was the reason the Tribunal mulcted liability rejecting the plea putforth by respondent No.2-insurer.

15. On the aspect of absence of driving licence at the time of accident, the Tribunal, though, referred to the ruling rendered by this Court relied on by the learned counsel for respondent No.2-insurer, in **United India Insurance Company Limited, Hyderabad and another v.**

[2] 2004(6) ALT 727
[3] 2000 ACJ 630

K.Narasimlu and others[4], wherein it was held that any minor or inconsequential deviation may not be sufficient to deny liability of insurer, but total absence of driving licence cannot be considered to be a minor or inconsequential deviation and the very fact that there was no licence to driver, itself has to be construed as valid and statutory responsibility for the owner under Section 5 of the Act making the insurer liable or reimburse the owner in respect of the claim of a third party and the insurer cannot be made liable to pay any compensation, notwithstanding its failure to make any specific plea about the owner entrusting the vehicle with full knowledge of absence of any licence for driver and more so, his insurer has specifically pleaded about the absence of any valid driving licence to the driver in its written statement as has proved the same through its evidence and held that the insurer was absolved of its liability.

16. The Tribunal, somehow, giving preference to the rulings relied on by the learned counsel for the petitioners rendered by this Court in **D.Krishnaveni and others v. Mohd. Sikander and another**[5], **National Insurance Company Limited, Hyderabad v. Tatoji Varalaxmi and others**[6] and the decision of the High Court of Delhi in **Oriental Insurance Company Limited v. Kamlesh and others**[7] and also the decision of the High Court of Rajasthan in **National Insurance Company Limited v. Soni and others**[8], held that the insurer cannot be exempted from its liability and, thus, fastened joint and several liability on both the respondents to pay the compensation awarded by it with the rate of interest at 6% per annum from the date of petition till realization and costs.

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[4] 2011 (3) ALD 246
[5] 2009(6) ALT 620
[6] 2008(5) ALD 442
[7] 2010(1) An.W.R. 788 (Del)
[8] 2006 ACJ 1661

17. The grounds raised by the appellant-insurer in the former appeal have already been mentioned above and so also the request made by the petitioners in the latter appeal.

18. Heard Sri T.Mahender Rao, learned Standing Counsel for the appellant-insurer in the former appeal and respondent No.2 in the latter appeal, and Sri P.Ramakrishna Reddy, learned counsel for the petitioners-claimants, who are respondent Nos.1 to 3 in the former appeal and the appellants in the latter appeal.

19. Now the points that arise for consideration in both these appeals are:

> "(1) Whether the period of coverage of the insurance policy mentioned in Ex.B.1 would gain precedence over the date of obtaining insurance policy and what is the effect of mentioning the period of coverage from a particular date even prior to payment of the premium, more particularly, when the owner of the vehicle was knowing full well of taking place of accident, just a couple of days prior to approaching the insurer for issue of insurance policy?
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> (2) Whether even in the absence of any kind of driving licence, can the insurer be mulcted with liability to pay the compensation amount?
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> (3) Whether the petitioners-claimants are entitled to enhancement of compensation?
>
> (4) Whether the order and decree under challenge in the present appeals cannot be sustained?"

20. It would be appropriate to take up point No.3 initially so that the finding that would be tendered on point Nos.1 and 2 would answer

which of the respondents would be liable to pay the compensation to the petitioners.

21. Point No.3: The age of the deceased was taken by the Tribunal as 48 years on the date of accident, his income as Rs.3,250/- per month and the multiplier '13' basing on the entries made in the Schedule-II to Section 163-A of the Act in regard to multiplier factor. Even in the table formulated by the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[9], the multiplier factor for the age group between 46 and 50 years is '13' and, therefore, the loss of dependency worked out by the Tribunal at Rs.3,38,000/- cannot be disturbed.

22. The Tribunal has also awarded Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. So far as the amount of Rs.5,000/- granted by the Tribunal towards funeral expenses is concerned, it is not in accord with what was provided in the Schedule-II to Section 163-A of the Act towards general damages. Only a sum of Rs.2,000/- is provided towards the said head. Towards loss of estate, according to the said schedule, only a sum of Rs.2,500/- is provided. Whereas, the Tribunal has awarded Rs.15,000/- towards the said head. So, the question is whether the amounts of Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses awarded by the Tribunal have to be restricted to Rs.2,000/- and Rs.2,500/- respectively, as provided under Schedule-II to Section 163-A of the Act. Of course, nothing was addressed during the course of arguments by either side. No amount was awarded towards loss of consortium even to petitioner No.1-wife of the deceased, though, the aforesaid Schedule

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[9] (2009) 6 SCC 121

provides a sum of Rs.5,000/- (**Petitioner No.1 is son of the deceased as per the order of the Tribunal**).

23. Further question that arises for consideration is, whether any amount towards future prospects can be awarded in addition to the loss of dependency worked out by the Tribunal.

24. Since the age of the deceased is taken as 48 years considering that he was self-employed, when the law declared by the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[10] is applied, the petitioners are entitled to 30% more by way of addition towards future prospects from the loss of dependency arrived at. 30% of Rs.3,38,000/- would work out to Rs.1,01,400/-. When the same is added to the loss of dependency, the petitioners would become entitled to Rs.4,39,400/- towards loss of dependency along with future prospects. The petitioners are also entitled to conventional sum of Rs.50,000/- in view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**[11].

25. Thus, the petitioners are entitled to a total sum of Rs.4,89,400/- (Rupees four lakhs eighty nine thousand and four hundred) as against Rs.3,53,000/- granted by the Tribunal towards compensation and the same is accordingly granted, subject to the findings that would be recorded on point Nos.1 and 2 as regards the liability of the respondents. The enhanced compensation amount shall be apportioned among the petitioners in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal. So far as the rate of interest is

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[10] 2013 ACJ 1403
[11] LAWS (SC) -2014-4-67

concerned, the Tribunal granted the same at 6% per annum and the same is maintained on the amount granted by the Tribunal and the interest at 7.5% per annum is granted on the enhanced amount in view of the decision of the Hon'ble Supreme Court in **Rajesh's** case (supra 10).

26. Turning to point No.1, when looked at the sequence of events, the accident had taken place at 10-30 p.m. on 01.08.2009, Ex.B.1-insurance policy shows that the insured approached the insurer on 03.08.2009, which date is mentioned against the column "Date of issuance". It is no doubt true, the next column relating to period of insurance shows "From 28.07.2009 : 05-00 hours to mid-night of 27.07.2010 : 00-00 hours". Now, the question is in case, it can be inferred from the facts and circumstances that respondent No.1 deliberately obtained the insurance policy with a view to evade his liability under the guise of indemnity right, certainly, the insured cannot be allowed to get the benefit. When Ex.A.1 is seen, at 11-45 hours on 02.08.2009, one Perumallu Rubin, shown as L.W.1 in the charge sheet-Ex.A.2, lodged the complaint. The said complainant is no other than the Municipal Supervisor and he has given relevant details therein. Thus, it is clear that by 02.08.2009 in the forenoon itself, the involvement of the two-wheeler has come to light, which gives an inescapable inference that the insured was posted with notice about taking place of accident. In fact, the charge sheet averments would clearly show that at about 13-00 hours, i.e., 1-00 p.m. on 03.08.2009 itself, the insured being the owner of the accident vehicle produced the accused-rider of the vehicle, by name, Vemdoti Suresh, before the investigating officer and, on interrogation, the accused admitted the guilt of the offence and even failed to produce the driving licence and, thus, his arrest was effected on the same day. This particular circumstance is

of vital significance, since on the very same day, the insured approached the insurer and paid the premium. When once the insured was aware of the taking place of the accident that took place a couple of days prior to the date of issue of insurance policy when the insured approaches to obtain the insurance policy and pays premium and even gets the coverage period mentioned as operative three days immediately next before the date of accident and five days next before the date of obtaining the said insurance policy is nothing but suppression of material fact and obtaining the insurance policy wantonly to evade his liability to pay the compensation and to shift it to the insurer. When the very object of insurance is a contract of utmost good faith which requires the insurer, proposer and life to be insured to disclose all material facts, certainly, the insured is duty bound to post the insurer with the knowledge of taking place of the accident, not only he suppressed the fact of taking place of accident but also he went to the extent of getting the period of coverage or the validity even prior to payment of premium, that too, even three days prior to the date of taking place of the accident. Nothing else is required to view the conduct of the insured in arriving at playing fraud in an attempt to evade the payment of compensation personally and to shift the burden of payment of compensation on the insurer, certainly, respondent No.1 cannot be aided with the statutory backing on the mere premise that the validity was shown from the date of accident. The Tribunal, somehow, failed to intrinsically examines these vital aspects of the case and even did not consider the ruling of this Court in **Gandham Nagesh's** case (supra 1) and went wrong in interpreting the validity clause contained in Ex.B.1 and favoured respondent No.1. It is no doubt true, the claimants are third parties, but on that mere ground, the fraud played by respondent No.1-owner of the vehicle cannot be given any allowance. Therefore, on this ground, certainly, the insurer cannot be made liable to pay the compensation and, therefore, this point is held in favour of the insurer.

27. Touching the second point whether absence of licence of any type to the driver would weigh the insured or whether the claimants cannot be deprived constituting the third parties, the Tribunal again went wrong in overlooking the latest decision of this Court in **K.Narasimlu's** case (supra 4) and somehow, leaned towards the rulings relied on by the learned counsel for the claimants before it. The law is well settled that when there is no licence at all, held by the rider at the time of accident, who causes it, certainly, liability cannot be fastened on the insurer even the initial liability to pay and recover the compensation. Therefore, the Tribunal again went wrong in rejecting that plea raised by the insurer before it.

28. For the aforesaid reasons, the order and decree dated 09.03.2012 passed by the Tribunal fastening liability on the insurance company-appellant in the former appeal cannot be sustained.

29. Therefore, M.A.C.M.A. No.3142 of 2012 preferred by the insurance company is allowed setting aside the order and decree dated 09.03.2012, passed by the Tribunal to the extent of fastening liability on the insurance company to pay the compensation to the petitioners, but, however, maintaining the liability to pay the compensation by the owner of the two wheeler, who is respondent No.1 in the original petition; and M.A.C.M.A. No.2176 of 2016 is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, but mulcting liability on

respondent No.1-owner of the vehicle alone, as indicated above. There shall be no order as to costs.

30. However, at the stage of admission of M.A.C.M.A. No.3142 of 2012, on 29.10.2012, in M.A.C.M.A. M.P. No.6811 of 2012, the insurance company was directed to deposit half of the awarded amount to the credit of the original petition before the Tribunal within six weeks. Again, by order dated 27.12.2012 in M.A.C.M.A. M.P. No.8201 of 2012, permitted petitioner Nos.1 and 2 to withdraw half of the amount deposited by the insurance company according to their proportionate shares while the share of petitioner No.3, who was minor, was directed to be kept in fixed deposit. Since the claim relates to the year 2009, it would be reasonable to direct the insurance company to recover the amount withdrawn by the petitioners from respondent No.1-owner of the vehicle. The petitioners are at liberty to recover the balance compensation amount from the owner of the two-wheeler-respondent No.1.

31. As a sequel thereto, miscellaneous petitions, if any pending in both the appeals, stand closed.

A. SHANKAR NARAYANA, J

21st October, 2016

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