

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* * * *

MACMA.No. 2073 of 2010

Between:

United India Insurance Company Limited.

....Appellant

And

Kondareddy Kanthamma, and 4 others

....Respondents

JUDGMENT PRONOUNCED ON: 16.06.2017

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

GUDISEVA SHYAM PRASAD, J

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 2073 of 2010JUDGMENT:

This appeal is filed by United India Insurance Company Limited, under Section 173 of the Motor Vehicles Act, 1988, aggrieved by the order dated 19.01.2010 passed by the Motor Accident Claims Tribunal, Anantapur, in O.P. No.647 of 2008.

2. Brief facts of the case are that on 16.4.2008, at about 12:30 PM, when the deceased was proceeding on TVS moped bearing registration No.AP 02E 4397 on Dharmavaram-Puttaparthi road, and when he reached near Yerragunta, a motorcycle bearing registration No.AP 02S 3707, rode by its rider in a rash and negligent manner, dashed against the moped of the deceased. As a result, the deceased fell down and received serious head injuries and died on the same day at Government General Hospital, Kurnool. A case was registered in Crime No.68 of 2008 against the rider of the motor cycle. Alleging that the accident occurred due to the rash and negligent riding by the rider of the motorcycle bearing registration No.AP 02S 3707, the petitioners filed the claim petition under Sections 140 and 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.3,50,000/- against respondents 1 and 2, who are the rider and the insurer, of the offending motorcycle.

3. Respondent No.1-rider of the offending motorcycle remained ex parte.

4. Respondent No.2-Insurer filed counter stating that the respondent No.1-rider was not in possession of valid and effective driving licence at the time of accident, and that the police have registered a case and filed charge sheet against him for not possessing valid driving licence and therefore the insurer is not liable to indemnify respondent No.1 with regard to the compensation payable to the petitioners.

5. Based on the above pleadings, the Tribunal framed the following issues for trial:

- (i) **Whether the accident occurred on 16-04-2008 at about 12.30 p.m., due to rash and negligent driving of Motor Cycle bearing No.AP-02-S-3707 by its driver and dashed against the T.V.S. moped and caused death of the deceased?**
- (ii) **Whether the petitioners are entitled to compensation? If so, to what amount and from which respondent?**
- (iii) **To what relief?**

6. On behalf of the petitioners, PW1 was examined, and documents Exs.A1 to A6 were marked. On behalf of the respondents, RWs.1 and 2 were examined, and documents Exs.B1 to B6 were marked.

7. The Tribunal, on consideration of the oral and documentary evidence, held that the accident occurred due to the rash and negligent riding by the rider of the offending motorcycle bearing No.AP 02 S 3707, and awarded compensation of Rs.2,86,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realisation, holding respondent Nos.1 to 2 jointly and severally liable to pay the compensation. The 2nd respondent-insurer was given liberty to recover the compensation paid to the petitioners,

from the 1st respondent-owner of the offending motorcycle. Aggrieved by the order passed by the Tribunal, the Insurance company filed this appeal.

8. Heard Sri E. Venugopal Reddy, learned counsel for the appellant-insurance company, and Sri N. Kari Basaiah, learned counsel for the respondents-claimants.

9. It is contended on behalf of the appellant that there is violation of terms and conditions of insurance policy as the driver of crime vehicle had no valid driving licence to drive the crime vehicle at the time of accident. The appellant also contended that the driving licence possessed by the driver was fake and therefore the order of pay and recovery is not in accordance with law. It is also contended that the accident occurred due to the negligence of the deceased alone. It is further contended that the quantum of compensation awarded by the Tribunal is highly excessive.

10. Learned counsel for the appellant contended that the rider of the offending motorcycle had no valid and effective driving licence at the time of accident, which is a breach of conditions of the insurance policy. He further contends that the present case does not fall under any of the categories viz., (i) having licence to drive one type of vehicle, and drove another type of vehicle; (ii) fake licence; (iii) minor driving without having licence, and (iv) driver holding expired licence. He submits that this case stands on a different footing and therefore, pay and recovery cannot be ordered in this case.

11. Learned counsel for the respondents-claimants contended that Motor Vehicles Act is a beneficial legislation and the Tribunal ordered pay and recovery based on the judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd., v. Swaran Singh¹, and the same does not require any interference. It is further contended that the deceased was a third party to the insurance policy and the liability of the insurer cannot be exonerated.

12. It is also contended that the insurance company cannot escape its liability to third parties on the ground that the licence of the driver of the insured vehicle is found to be a fake one. Even if it is within the knowledge of the insured, the insurance company cannot escape its liability to third parties. It may, however, in such cases, recovery of compensation can be ordered against insured. The Hon'ble Supreme Court has also taken similar view in the case of National Insurance Company v. Ram Kali and others²; National Insurance Company v. Savitri Devi³ and New India Assurance Company Ltd. v. Manjeetkaur and ors⁴.

13. In Lal Chand v. Oriental Insurance Co. Ltd⁵, it was settled that the insurance company can take a defence that the owner permitted un-licenced person to drive the vehicle and the burden is on the insurer only to prove that the owner was guilty of negligence and failed to exercise reasonable care.

¹ 2004 ACJ 1

² (2004) 1 SCC 565

³ (2004) 1 SCC 596

⁴ 2004 (2) GLR 984

⁵ (2006) 7 SCC 318 : 2006 (3) SCC (Cr) 266

14. In *Prem Kumari v. Prahlad Dev*⁶, the principles laid down in *Swaran Singh* (1 supra) are said to have been applicable only to third party claims and not to other cases as per the provisions under Section 147 and 149 of the Motor Vehicles Act, 1988.

15. In *National Insurance Company Ltd. v. Kusum Rai*⁷, the said proposition was clearly made by directing the insurer to pay at the first instance and recover as per the directions given in *Oriental Insurance Company Ltd. v. Nanjappan*⁸, in view of the fact that the appellants therein were minor children and widow of the deceased.

16. In *Rakesh Kumar v. United India Insurance Company Ltd.*⁹, it was held that once the licence was proved by driver and marked in evidence and without there being any objection by the insurance company, the insurance company had no right to raise any objection about its admissibility and manner of proving of the licence at a later stage. It was held that the insurance company had failed to adduce any evidence to prove that the driving licence Ex.R1 was either fake or invalid for some reason. Therefore, it was held that the driver of the offending vehicle was holding valid driving licence at the time of accident and since the insurance company failed to prove otherwise it was liable to pay compensation awarded by the Tribunal and enhanced by the High Court, thereby the appeals filed by the insured (owner of the offending vehicle) were allowed, and the impugned order therein insofar as relating to exoneration of

⁶ (2008) 3 SCC 193

⁷ (2006) 4 SCC 250

⁸ (2004) 13 SCC 224

⁹ (2016) 14 SCC 219

insurer's liability to pay compensation was set aside and the insurer was held jointly and severally liable to pay compensation.

17. It is obvious that under Section 149 of the Motor Vehicles Act, 1988, the defences available to the insurer are stated. Sections 146, 147 and 148 deal with third party insurance and the insurer's liability to pay compensation to third party victims who suffered in the accident.

18. The decision in *S.Iyyapan v. United India Insurance Company Ltd.*¹⁰ though not directly applicable to the facts of the present case, it can be relied upon for the ratio laid down in it. In the instant case, the deceased while travelling on moped was hit by the motorcycle and succumbed to injuries sustained by him in the accident. The legal representatives of the deceased made a claim of Rs.3,50,000/- against the owner and insurer of the motorcycle. The owner remained ex parte. The insurer resisted the claim on the ground that the driver of crime vehicle has no valid driving licence to drive motorcycle. Except the above plea of no valid driving licence, no other plea was considered by the Tribunal. The Tribunal held that the insurer did not dispute the accident. PW1 was the wife of the deceased. She filed Ex.A1-FIR. As per FIR, the person who saw the accident gave report stating that the accident occurred due to rash and negligent driving of the driver of motorcycle. Ex.A2 and Ex.A3, the Post-mortem Examination, and Inquest Report, reveal that the deceased died of the injuries received in the accident. The appellant has not disputed the manner in which the accident has

¹⁰ (2013) 7 SCC 62

occurred. Now he cannot take that plea in this appeal. However, the evidence of PW1 coupled with documents Exs.A1 to A3 prove the rash and negligence of rider of motorcycle. Therefore, it is not necessary to interfere with the finding of the Tribunal on the issue of rash and negligence on the part of rider of motorcycle.

19. The submissions of counsel for appellant about the income of deceased also do not require to be interfered as the Tribunal has taken notational income of Rs.2,000/- which is very minimum of daily wage earned by deceased.

20. The arguments advanced by the learned counsel for the appellant does not appear to be reasonable in the light of the facts and circumstances of the present case. It is contended that the driver of the crime vehicle had no driving licence at all, but whereas there is a clear finding by the Tribunal, basing on the evidence, that the driver of the crime vehicle was having fake licence. The insurer has not taken any steps to prove that the owner of the crime vehicle has entrusted the vehicle to the driver knowing fully well that the driver was having a fake driving licence. The liability of the insurer cannot be exonerated as in this case there is a licence and believing that there is a licence, the owner has entrusted the vehicle. Because of the violations of the terms and conditions of the policy, a third party cannot be penalised. The deceased is a third party in this case. Therefore, his rights cannot be defeated in view of the violations on the part of the insured. In the light of catena of decisions referred above, wherein it was held that the legislative intention was to give benign protection and benefit to the claimants in case of the

deceased being a third party to the contract of insurance policy, the insurer has to indemnify the compensation to be paid by the owner, and therefore, the findings of the Tribunal in ordering pay and recovery does not require interference. In the light of the decision in Nanjappan (8 supra), this is a fit case in which pay and recovery can be ordered.

21. In the result, the appeal is dismissed, and the order dated 19.01.2010 passed by the Tribunal in O.P. No.647 of 2008 is confirmed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

June, 2017

Note: LR copy to be marked.
B/o
KSM

GUDISEVA SHYAM PRASAD, J



HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



M.A.C.M.A. No. 2073 of 2010

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