THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 923 of 2010

JUDGMENT:

This appeal is arising out of the Order and Decree dated 07.01.2010 passed in MVOP No.1282 of 2006 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Guntur. The appellant herein is the petitioner before the Tribunal.

2. Brief facts of the case are that on 07.06.2006, while the petitioner was going on a Hero Honda Splendor bike bearing number AP-07-AB-4296 along with his worker Punnaiah, the petitioner on seeing a tipper lorry coming in opposite direction got down the road. At that time an auto bearing No.AP-07-TT- 6698 was coming from the backside of the tipper lorry and hit the petitioner's motorcycle. As a result, the petitioner and the pillion rider fell down on the road and received injuries. The petitioner sustained fractures to tibia and tibial spine, right knee joint, cut wound and other injuries. The petitioner was admitted in M/s Sai Diabetes and Specialty Hospital, Old Club Road, Guntur. The Station House Officer Guntur Rural police station registered a case in Crime No. 135/06 against the driver of the auto. The petitioner was aged about 37 years and was hale and healthy by the date of accident. He was running a poultry farm at his house and was earning Rs.20,000/- per month, and he was also running a Chicken Shop at Main Centre, Perecherla and earning Rs.10,000/- per month. Due to the injuries sustained by

him in the motor vehicle accident, he became permanently disabled and lost earning capacity. The petitioner had incurred medical expenditure of Rs. 1,50,000/–. The petitioner filed claim petition claiming compensation of Rs.5,50,000/- against respondent No.1-owner of the auto bearing No. AP-07-TT-6698, and respondent No.2-insurer of the auto.

3. The 1st respondent-owner of the crime vehicle remained ex parte. The 2nd respondent filed his counter denying his liability. It is contended that the driver of the auto had driven it in a rash and negligent manner and therefore there is no negligence on the part of the driver of the lorry. The driver of the auto has no valid and effective driving license and no valid permit and fitness certificate at the time of accident. The first respondent had violated the terms and conditions of insurance policy and therefore the 2nd respondent-insurer is not liable to pay any compensation. It is also contended that the petitioner did not sustain any permanent disability and that he can perform his duties as usual and his earning capacity was also not affected. It is also contended that the accident had occurred due to the contributory negligence on the part of both the drivers of the vehicles i.e Hero Honda splendor bike and also auto. It is lastly contended that the claim of the petitioner is excessive and therefore sought for dismissal of the petition.

4. On behalf of the petitioner, PWs.1 and 2 were examined and Exs.A1 to A20 were marked. On behalf of the 2nd respondent,

RWs.1 and 2 were examined and Exs.B1 to B5 and Ex.X1 were marked.

5. The Tribunal, on consideration of the evidence available on record, awarded compensation of Rs.2,88,779/-, with proportionate costs and interest at 7.5% per annum, payable by the 1st respondent-owner. The liability of the 2nd respondent was exonerated.

6. Aggrieved by the Judgment of the Tribunal, the appellant-claimant preferred this appeal inter alia contending that both the owner and insurer of the crime auto are jointly and severally liable for payment of compensation and that the Tribunal ought to have ordered pay and recovery against the 2nd respondent-insurer.

7. Heard learned counsel for the appellant and the learned counsel for the 2nd respondent-insurer.

8. The point for consideration is –

(i) Whether both the respondents 1 and 2, the owner and insurer, are jointly and severally liable for payment of compensation?

(ii) Whether the appellant is entitled to the relief of pay and recovery against the 2nd respondent-insurer.

9. Learned counsel for the appellant-claimant submitted that the Tribunal, without considering the evidence on record, has exonerated the liability of the insurer and dismissed the claim against the insurer. It is contended that the Tribunal placed reliance

on Oriental Insurance Co. Ltd., v. Angad Kol and others[1] and New India Assurance Co. Ltd., v. Roshanben Rahemansha Fakir and another[2], and came to the conclusion that the driver of the crime vehicle did not possess valid and effective driving licence at the time of accident and therefore exonerated the liability of the insurer. The Tribunal held that the there is violation of terms and conditions of policy, as such the liability of insurance company was exonerated.

10. The Tribunal, at paragraph 20 of the impugned judgment, observed as under:

> ***"20. Now the court has to see whether the driver of the said auto did possess valid and effective driving licence at the time of accident. One Sk. Mastan Vali, S/o Hallabakshu was driver of the auto bearing No. AP07TT 6698 at the time of accident. RW2 is working as Junior Asst. in RTA Office, Guntur. RW2 stated that the Office of RTA issued Ex.B2 marked through RW1. Ex.B2 is driving particulars of Mastan Vali Shaik, S/o, Hallabakshu. As seen from Ex.B2 Sk. Mastan Vali obtained non-transport licence on 14.12.1998 and is valid till 13.12.2018, obtained transport licence with badge on 22.06.2006 and is valid upto 21.06.2009. Through RW1 Ex.B5 i.e., Registration Certificate of the vehicle bearing No.AP07TT 6698 was marked. The said vehicle is auto rickshaw with a seating capacity of four. The petitioner is not owner of the said vehicle as seen from Ex.B5. On seeing Ex.B5 it can be said that the said vehicle is meant for transporting passengers i.e., transport vehicle. Driver of the said auto was possessing on-transport licence only as on the date of accident. It can therefore be said that driver of the said auto did not possess valid and effective driving licence as on the date of accident. It can therefore be said that R1 violated the***

[1] 2009 ACJ 1411

[2] 2008 ACJ 2161

terms and conditions of the policy and committed breach. Taking a clue from the above decisions I opine that the insurance company is not liable to pay compensation."

11. In Angad Kol (1 supra), the Hon'ble Supreme Court ordered pay and recovery as the driver of the crime vehicle was not holding valid and effective licence for driving the crime vehicle. In New India Assurance Co. Ltd., v. Roshanben Rahemansha Fakir and another[3] also, the Hon'ble Supreme Court ordered pay and recovery as the driver of the crime vehicle was not holding valid and effective driving licence to drive the goods vehicle.

12. In the instant case, the Tribunal has totally dismissed the claim against the 2nd respondent-insurer in view of violation of terms and conditions of insurance policy as the driver of crime vehicle was not possessing valid and effective driving licence by the date of accident.

13. The insurer got examined RW2 - a Junior Assistant working in RTA Office, Guntur, to prove the driving licence particulars of the driver of the crime auto, by name Mastan Vali Shaik. According to him, Ex.B2 was a licence pertaining to Shaik Mastan Vali to drive non-transport vehicle and the licence was issued on 14.12.1998 and was valid till 13.12.2018. He has also obtained a transport licence with badge on 22.06.2006 which is valid upto 21.06.2009. RW1 has filed Ex.B5-Registration No. of the crime auto AP 07 TT 6698 which

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[3] 2008 ACJ 2161

shows that the vehicle was meant for transporting passengers i.e. a ransport vehicle.

14. The Tribunal, on consideration of evidence of RW1 and RW2 of Ex.B2 and B5 came to conclusion that the driver of crime auto was possessing driving licence to drive a non-transport vehicle but he has driven a transport vehicle. His transport licence has expired by the date of accident. It is pertinent to note that the driver of crime vehicle was having a valid licence for driving a transport vehicle prior to the accident and it has expired.

15. It is also obvious that the driver of the crime auto was having transport and non-transport licences at one point of time. The Tribunal has referred to the above two decisions rendered in the cases of Angad Kol (1 supra) and Roshanben (2 supra), where there was an order of pay and recovery in cases of the driver of the crime vehicle not possessing valid and effective driving licence by the date of accident.

16. Even in the recent judgment of the apex Court in the case of Iyyapan v. United India Insurance Co. Ltd.[4], it was clearly held that the driver holding a valid driving licence to drive light motor vehicle drives a commercial vehicle, he is deemed to have valid driving licence. It was observed in paragraphs 18 and 19 of the Iyyapan (4 supra) judgment, as under:

[4] (2013) 7 SCC 62

"18. 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. 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.

19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.

17. In the instant case, the crime vehicle was an auto. It was meant for carrying passengers. The driver of the crime vehicle has obtained non-transport vehicle licence valid from 14.12.1998 to 13.12.2018. He was having a transport licence from 22.06.2006 to 21.06.2009 and therefore, in the light of above decisions, this is a fit case where the insurance company can be directed to pay the

compensation amount in the first instance and recover the same from the owner of the crime auto.

18. In view of the foregoing reasons, the contention of the appellant-claimant that the respondents 1 and 2 are jointly and severally liable to pay compensation, cannot be considered but as far as the request of pay and recovery by 2nd respondent-insurer, it can be considered in this case in view of the facts and circumstances and in the light of the above decisions.

19. In the result, the appeal is allowed, directing the 2nd respondent to deposit the balance of compensation amount within two months from the date of receipt of a copy of this order, and thereafter recover the same from the 1st respondent-owner of the crime vehicle, as per the procedure laid down in the case of National Insurance Co. Ltd. v. Chella Bharathamma and others[5]. On such deposit, the appellant is permitted to withdraw the entire amount since the accident occurred in the year 2006.

No costs. Miscellaneous petitions, if any pending, shall stand closed.

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GUDI SEVA SHYAM PRASAD, J

30 March, 2017
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[5] AIR 2004 SC 4882

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