THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A.No.998 of 2010

JUDGMENT:

This appeal is arising out of the order, dated 24.02.2010, passed in M.V.O.P.No.1268 of 2008 by the Motor Accidents Claims Tribunal-cum-IX Additional District Judge (Fast Track Court), Guntur.

2. The appellant is the claimant in M.V.O.P.No.1268 of 2008 filed under Section 166 of the Motor Vehicles Act and he is the injured in the motor vehicle accident occurred on 19.08.2008.

3. The brief facts are that while the petitioner was driving an auto bearing No.AP 7TT 5329 with two passengers from Peda Kakani to Guntur, when the auto reached near opposite to Polisetty Somasundaram Company, he turned the auto from east to west side of the road, in the meanwhile, one lorry bearing No.ADG 0144 coming from Guntur side driven by its driver in a rash and negligent manner dashed the auto of the petitioner, as a result of which the petitioner sustained severe injuries all over his body including grievous bleeding injury to right ear and inmates of the auto also sustained severe injuries. The petitioner was shifted to Government General Hospital, Guntur for treatment. The police registered a case in Crime No.109 of 2008 under Sections 338 and 337 IPC against the driver of the lorry bearing No.ADG 0144. The accident occurred due to the rash and negligent driving of the driver of the lorry,

therefore, the petitioner claimed compensation of Rs.2,00,000/- against respondents 1 and 2, who are owner and insurer of the lorry respectively.

4. Respondent No.1, owner of the lorry bearing No.ADG 0144, was set *ex parte* before the Tribunal.

5. Respondent No.2 filed written statement denying allegations made in the petition and further stating that the petitioner is put to strict proof of the manner in which the accident occurred and nature of injuries suffered by the petitioner, his age, occupation and income. It is stated that the driver of the lorry bearing No.ADG 0144 was not having valid effective driving licence and he has no driving licence, valid permit and fitness certificate at the time of accident. The said lorry was not insured with the 2nd respondent at the time of accident. As such, there is no valid insurance policy at the time of accident.

6. The Tribunal examined the witnesses PW.1, the injured in the accident, and marked Exs.A.1 to A.3 and on behalf of respondents, RWs.1 and 2 were examined, Exs.B.1 to B.3 were marked. On consideration of evidence, the Tribunal held issue No.1 holding that the accident occurred due to rash and negligent driving of driver of the lorry bearing No.ADG 0144. On consideration of nature of injuries suffered by the petitioner and the expenditure incurred by

him, the Tribunal awarded compensation of Rs.26,000/-. Respondent No.1 was held liable for payment of compensation. The liability against respondent No.2 was exonerated.

7. The appellants being aggrieved by the quantum of compensation awarded by the Tribunal and also exonerating the liability of the insurer has preferred this appeal.

8. Heard the arguments of Sri Ch.Ravindra Babu, learned counsel for the appellant, and Sri B.Devanand, learned Standing Counsel for the 2nd respondent.

9. It is contended on behalf of the appellant that the Tribunal having found that the Insurance policy was in force by the date of accident, has held that the insurer is not liable and exonerated the liability of the insurer. The learned counsel placed reliance on a decision reported in Swaran Singh v.State of Punjab[1] and also the decision reported in National Insurance Co. Ltd. v. Challa Bharathamma & others[2] and submitted that in view of the fact that Motor Vehicles Act is a beneficial legislation, it would be proper for the insurer to satisfy the award by paying the compensation at the first instance and recover the same from the owner of the vehicle later. The relevant portion in the judgment in Challa Bharathamma (2 supra) reads as under: (Para Nos.12 and 13)

[1] 2004 ACJ 1 SC
[2] 2004 ACJ 2094

"12. High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal *vis-à-vis* one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable.

13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or

properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured. The appeals are disposed of with the above observation. There will be no order as to costs."

10. Learned Standing Counsel for the 2nd respondent contended that the driver of the crime vehicle was not having valid permit to ply the vehicle on the road by the date of accident and it is in violation of terms and conditions of the insurance policy, hence, the insurer is not liable to pay compensation. Therefore, the Tribunal has rightly exonerated the liability of the insurer. In support of his contention, he also placed reliance on a decision reported in Thara v. Syamala[3], wherein it was held in para No.2 as under:

"……….the effect is that a goods vehicle though covered by a policy of insurance will cease to be covered by the policy when permit expires. This is exactly what happened in the case of the appellant's vehicle that the fitness certificate and the permit had expired prior to the date of the accident. Even though learned counsel for the appellant relied on section 149(2)(a)(i)(c) of the Act and contended that since the vehicle was used for the purpose for which it is permitted it is covered by the policy, we do not think the argument is acceptable because even though the use of the vehicle is for the purpose for which the vehicle was intended, such use is permissible under the Act only when the vehicle has a permit. In other words, a goods carriage can be used on the road for carrying goods only after obtaining the permit and the use of the vehicle without

[3] 2009 ACJ 2440

fitness certificate or permit will entitle the insurer to dishonour the liability under the policy."

11. It is contended that the crime vehicle was not having valid permit to ply on the road by the date of accident and the same was observed by the Tribunal and rightly exonerated the liability of the insurer. Therefore, the insurer is not liable to pay any compensation. The insurer also cannot be ordered to pay and recover in this case.

12. The Tribunal in para No.13 of the judgment placed reliance on the evidence of RW.1, Senior Assistant working in New India Assurance Company Limited, Guntur. According to his testimony, Ex.B.1 is the copy of the insurance policy of the crime vehicle i.e., lorry bearing No.ADG 0144. The period of policy was from 11.12.2007 to 10.12.2008. Accident occurred on 19.08.2008, but by the date of accident, the crime vehicle was not having permit to ply. The Insurance Company has also requested the RTA, Guntur to furnish the particulars of the crime vehicle. Accordingly, particulars are furnished by the RTA stating that the permit was valid up to 12.06.2008. This clearly shows that by the date of accident, there is no permit for the crime vehicle to ply on the road. The Tribunal on consideration of the evidence of RWs.1 and 2, came to the conclusion that the crime vehicle was not having valid permit by the date of accident and therefore, exonerated the liability of the insurer

as there is violation of terms and conditions of the insurance policy. It is obvious that the crime vehicle was not having valid permit by the date of accident and it is in violation of terms and conditions of insurance policy.

13. However, in the decision reported in Challa Bharathamma, the insurer was directed to pay and recover the same. As held in para No.13 of the judgment referred to above, the Apex Court considering the beneficial object of the Act has extended the benefit of pay and recovery to the claimants. No doubt, the learned Standing counsel for the 2nd respondent has placed reliance on a decision reported in a case of and it appears that the judgment rendered in the case of Challa Bharathamma (2 supra) was not referred in the judgment in Thara v. Syamala (3 supra). Therefore, the judgment rendered in the case of Challa Bharathamma is only to be taken into consideration and can be ordered the insurer to pay at the first instance the compensation to the claimants and recover the same as per the procedure specified in para No.13 of the judgment in Challa Bharathamma (2 supra).

14. Learned counsel for the appellant further contended that compensation awarded by the Tribunal is inadequate. It is stated that the Tribunal has awarded compensation of Rs.15,000/- for one grievous injury, pain and suffering and Rs.3,000/- for one simple injury, pain and suffering and Rs.3,000/- for medical expenses, extra

nourishment, attendance and other incident charges and Rs.5,000/- towards of loss of expectation of life and amenities, loss of pleasure and loss of earnings, in total Rs.26,000/- was awarded.

15. Keeping in view the ratio laid down in Raj Kumar v. Ajay Kumar and another[4] and Reshma Kumari and others v. Madan Mohan and another[5], the just and reasonable compensation is to be awarded. The compensation awarded by the Tribunal does not appear to be just and reasonable and therefore, it requires to be enhanced under various heads. On consideration of the evidence on record, it is appropriate to enhance the compensation in this matter and therefore, the compensation is enhanced as shown in the following tabular form:

Sl.No.	Name of Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
01.	Grievous injury	15,000/-	25,000/-
02.	Simple Injury	3,000/-	5,000/-
03.	Pain and suffering for both injuries	-	25,000/-
04.	Medical Expenses	3,000/-	3,000/-
05.	Extra nourishment, attendance charges and incidental charges	3,000/-	10,000/-
06.	loss of earnings, loss of expectation and loss of amenities, loss of pleasure and loss of earnings	5,000/-	20,000/-
	Total (Rs.)	26,000/-	88,000/-

[4] 2011 ACJ 1
[5] 2013 LS (SC) 276

16. In the result, the appeal is allowed in part by modifying the award by enhancing the compensation of Rs.26,000/- awarded by the Tribunal to Rs.88,000/- with costs and interest @ 7.5% per annum from the date of petition till realization. Respondent No.2 is directed to pay the compensation at the first instance and recover the same from the 1st respondent. The 2nd respondent is directed to deposit compensation amount within a period of two (02) months from the date of receipt of a copy of this order. On such deposit, the petitioner is permitted to withdraw the entire amount. The 2nd respondent can recover the amount from the owner of the vehicle as contemplated in the case of Challa Bharathamma (2 supra).

Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

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JUSTICE G.SHYAM PRASAD

Date:22.03.2017
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