

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No.1165 of 2010

JUDGMENT:

This appeal is arising out of Order and Decree dated 27.01.2010 in M.V.O.P. No.810 of 2006 on the file of the Motor Accident Claims Tribunal-cum-Principal District Judge, Nalgonda, awarding compensation of Rs.4,41,000/- with interest at 7.5 %per annum.

The appellant is United India Insurance Company Limited, who is the 2nd respondent in OP No.810 of 2010. The respondents 1 to 5 are the claimants and they filed the OP under Sections 163(A) and 166 R/w.140 of the Motor Vehicles Act, 1988, claiming compensation of Rs.6,00,000/- on account of the death of one Ramalingaiah in a motor vehicle accident. On 30.06.2006 at about 5.30 a.m., while the deceased Ramalingaiah was traveling on his Hero Honda Motorcycle bearing No.AP 24 L 7813 from Vanipakala village to go to Chityal village in Nalgonda District, one Auto bearing No.AP 24 V 4763 driven by its driver in a rash and negligent manner, dashed against the motorcycle of the deceased, due to which the deceased sustained grievous injuries and died on the spot. The respondents 1 to 5, who are the legal heirs of the deceased Ramalingaiah filed the above OP, claiming compensation of Rs.6,00,000/- against the owner of the vehicle (1st respondent in the OP) and the appellant (2nd respondent in the OP).

The Tribunal, on consideration of the evidence of PWs.1 and 2 and R.W.1 and also Exs.A1 to A6, and B-1 and B2, awarded compensation of Rs.4,41,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realization. Aggrieved over the award passed by the Tribunal, the appellant filed this appeal on

the sole ground that there is violation of terms and conditions of insurance policy.

Heard arguments of both sides and perused the material on record.

The point for consideration in this appeal is – *Whether the Insurer - appellant is liable to pay compensation?*

Learned counsel for the appellant - insurance company submitted that the owner cum driver of the crime vehicle was expired by the date of accident and therefore, the driver was not holding valid and subsisting driving licence and therefore, the appellant is not liable to pay any compensation. The Administrative Officer of the appellant was examined as RW-1 and according to the testimony of RW-1, the driver of the auto was having a driving licence, which is valid upto 31.04.2006 and the date of accident was 30.06.2006. It is submitted that the Tribunal held that both the owner and Insurer are liable to pay the compensation jointly and severally, but in view of the fact that the driver was not holding effective driving licence by the date of accident, the liability of the appellant may be exonerated or pay and recovery may be ordered.

Learned counsel for the respondents 1 to 5 submitted that in the light of the decision of the Apex Court in National Insurance Co. Ltd. v. Swaran Singh¹ in the event of the driver of the crime vehicle not having any valid and effective driving licence, pay and recovery can be ordered.

In the light of the arguments of the learned counsel for the appellant as well as the respondents, since it is a case where the driver of the crime vehicle was not holding valid and subsisting driving licence

¹ 2004 ACJ 1

by the date of accident as the licenece of the driver has expired and the in the light of the decision reported in Swarna Singh's case (supra 1) Pay and recovery is ordered in this case instead of fixing the entire liability on the insurer.

In the result, the appeal is partly allowed directing the appellant – Insurance company to deposit the compensation amount as awarded by the Tribunal, within two months from the date of receipt of a copy of this order, and thereafter recover the same from the owner of the crime vehicle – 6th respondent, as per the procedure laid down in the case of National Insurance Co. Ltd. v. Chella Bharathamma and others².

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

April 21, 2017

KTL

GUDISEVA SHYAM PRASAD, J



² AIR 2004 SC 4882