THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

MACMA Nos. 547 and 548 of 2010

COMMON JUDGMENT:

The legal heirs of the deceased – Kurva Bheemanna and Kurva Ramulamma @ Chittemma, have filed two separate Original Petitions i.e., OP.Nos.385 and 386 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (FTC), Mahabubnagar at Gadwal (for short, the Tribunal), claiming compensation on account of the death of the deceased in a motor vehicle accident. The deceased in this accident are wife and husband. The deceased wife and husband, while proceeding on a motorcycle, were being dashed by a crime vehicle. In that accident, they sustained injuries and died. The Tribunal has passed two separate awards though the accident is one. The insurance company, being aggrieved by the excessive compensation awarded by the Tribunal, and also challenging its liability, has preferred these two appeals, which are clubbed together and are being disposed of by this common judgment.

2. The points for consideration in these matters are:

(i) Whether there is violation of terms and conditions of insurance policy as the driver of the crime vehicle was possessing driving licence to drive only light motor vehicles and he is not having an endorsement to drive a commercial vehicle?

(ii) Whether the accident occurred due to the travel of third persons on a motorcycle as against the permitted capacity of two, which resulted in accident? and

(iii) Whether the owner of the vehicle violated the policy conditions by entrusting the vehicle to a person who did not having a valid and effective driving licence?

3. The appellant herein is the 2nd respondent and the respondents herein are the claimants before the Tribunal and for

the sake of convenience, the parties are referred to as they are arrayed before the Tribunal.

4. The facts of the case, in brief, are as follows:-

On 11.04.2006, at 1.00 pm, when the deceased-Kurva Bheemanna and Kurva Ramulamma @ Chittemma, who are husband and wife, were travelling on the motor cycle bearing No. AP 22 C 2682 from Kurvapally towards Gadwal, and when they reached near Nagaraju Mill on Gadwal-Ieej Road, one Mahindra Bolero Jeep bearing registration No.AP-15-W-1126, being driven by its driver in a rash and negligent manner, dashed the motor cycle from the back side, as a result of which, the wife died on the spot and the husband succumbed to the injuries while undergoing treatment at G.G. Hospital, Kurnool. Due to sudden demise of the deceased, the claimants lost their bread winner. The parents and the children of the deceased, filed two claim petitions, viz., Original Petition Nos.385 and 386 of 2007 before the Tribunal under Section 163-A of the Motor Vehicles Act, 1988, claiming Rs.4,00,000/- and Rs.5,00,000/- respectively as compensation under different heads against the respondents, who are the owner and insurer of the offending vehicle.

5. The grounds of appeal are as follows:

(i) The driver of the offending vehicle was not possessing a valid and effective driving license. The vehicle involved in the accident is a goods carriage vehicle. The driver of the offending vehicle was not possessing a valid driving licence to drive a goods carriage vehicle. The driver was possessing a driving license to drive only a non-transport light motor vehicle.

(ii) There is breach of policy conditions as the driver of the offending vehicle was having only light motor vehicle licence for driving non-transport vehicle. With that license, he cannot drive the goods carrying commercial vehicle.

(iii) Three persons traveled on a motorcycle as against the permitted capacity of two. This is in violation of the rules of the Motor Vehicles Act, which in turn violates the terms and conditions of the insurance policy.

(iv) The owner of the vehicle has violated the conditions of the policy by entrusting the vehicle to a person who did not possess the valid and effective driving license.

6. The learned counsel for respondents 1 to 5 has raised the following contentions:

(i) The Jeep involved in the accident is not a goods vehicle. It's weight was less than 1500 kgs. It was a light motor vehicle.

(ii) The Tribunal has awarded inadequate compensation. The respondents are entitled for enhancement of compensation.

(iii) In case there is any violation of terms and conditions of insurance policy, the insurer may be directed to pay and recover the compensation from the owner of the vehicle.

7. Before the Tribunal, respondent No.1 – owner of the crime vehicle remained *ex parte*. Respondent No.2 – Insurance Company contested the matter and filed counter resisting the claim of the claimants on different grounds.

8. On behalf of the claimants, P.Ws.1 and 2 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Exs.B.1 to B.3 were marked.

9. The Tribunal, on consideration of oral and documentary evidence available on record, held that the insurance company is liable to pay compensation to the claimants. On the point of quantum of compensation, the Tribunal awarded a compensation of Rs.1,67,000/- in O.P.No.385 of 2007 and Rs.1,87,000/- in O.P.No.386 of 2007 to the claimants. Aggrieved by the same, the 2nd respondent – Insurance Company filed MACMA No.547 of 2010

against the award passed in O.P.No.386 of 2007, and filed MACMA No.548 of 2010 against the award passed in O.P.No.385 of 2007.

10. Heard the submissions of Smt A.Jayanthi, learned standing counsel appearing for the appellant – insurance company and Sri T.Damodar, learned counsel for respondent Nos. 1 to 5/claimants. Though notice was served on respondent No.6, none appears on behalf of R.6.

11. Now the point that arises for consideration in both these appeals is whether the insurance company is not liable to pay compensation to the respondents/claimants, in view of the violation of terms and conditions of insurance policy with regard to non possessing of driving license to drive the commercial vehicle by the driver of the offending vehicle?

12. This is an appeal by the insurance company. The main contention of the insurance company is that the driver of the offending vehicle did not the valid and effective licence. The driver of the offending vehicle was having only licence to drive light motor vehicle, whereas the vehicle involved in the accident is a commercial goods vehicle and there is no endorsement on the licence to drive a commercial goods vehicle, and therefore, the insurance company is not liable to pay any compensation to the respondents. In support of her contentions, the learned standing counsel placed reliance on the decisions of the Apex Court in **Surina Durvasulu (died) by LRs Vs. Bhava Narayana Murthy and others**[1]; **National Insurance Company Limited Vs.**

[1] 2008 ACJ 654 (AP)

Kaushalya Devi and others[2]**; New India Assurance Company Limited Vs. Prabhu Lal**[3]**; and Oriental Insurance Company Limited Vs. Sivammal**[4]. Learned Standing Counsel for the appellant further contended that as per the contents of Ex.A.1 – FIR and Ex.A.2 – Charge sheet, three persons were traveling on the motor cycle at the time of accident and there was contributory negligence. The two wheeler is supposed to carry only two persons; and, as three persons were traveling on the motor cycle, the accident has occurred and therefore, there is contributory negligence on the part of both the deceased by traveling on two wheeler along with another third person, which is against the provisions contained in the Motor Vehicles Act, 1988, and the Rules made thereunder and therefore, the insurance company is not liable to pay compensation to the respondents/claimants.

13. *Per contra*, the learned counsel for respondents/claimants submits that the Tribunal has an obligation to determine the just compensation. But, it awarded inadequate compensation and therefore, it requires to be enhanced.

14. It is further contended that the vehicle involved in the accident i.e., Mahindra Bolero Jeep bearing registration No.AP-15-W-1126, is a light motor vehicle. The driver of the vehicle is having valid driving license to drive the light motor vehicle by the date of accident. In support of his contentions, the learned counsel for the respondents/claimants placed reliance on the finding given by the Tribunal in para No.9 of its judgment, which reads as follows:

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[2] 2009 ACC 52 (SC)
[3] 2008 ACJ 627
[4] 2009 ACJ 1081 (Madras)

> "The vehicle involved in the accident is a light motor vehicle, non transport. Ex.B.2 is the Certificate of Insurance of Goods Carrying Vehicle weight about 2750 Kgs. It is further contended that the driver of the crime vehicle possessed license of light motor vehicle. Therefore, he is entitle to drive the crime vehicle, which is a light motor vehicle. As Ex.B.1 is a valid license granted by the Transport Department, the appellant cannot contend that the driver of the crime vehicle has no valid and effective driving license. It is further contended that the tribunal has rightly concluded that the driver of crime vehicle has possessed valid driving license and therefore, there is no violation of terms and conditions of the policy".

15. In support of his contentions, the learned counsel for respondents/claimants placed reliance on a decision of the Apex Court in **S.Iyyapan Vs. M/s United Indian Insurance Company Limited and another**[5] wherein it was held in para No.18 and 19 as under:

> "In certain circumstances specified in S.149, 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 S. 149, the insurer can defend the action inter alia on the grounds namely, (i) the vehicle was not drive 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. 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".

16. The learned counsel for the respondents/claimants would further submit that if there is any violation of the terms and conditions of insurance policy in respect of non possession of valid driving license, the 3rd party can proceed against the insurance company and recover the amount and in turn, the insurance company would recover that amount against the insured and therefore, requested to order pay and then recover in this case, if

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[5] AIR 2013 SC 2262

violation is proved. Learned counsel for respondents placed reliance on another decision reported in **Kulwant Singh and others v. Oriental Insurance Company Limited**[6], and submitted that the insurance company cannot disown its liability merely because there was no endorsement to drive a light commercial/goods vehicle in otherwise valid driving license to drive light motor vehicle. It is further submitted by the learned counsel for respondents that the driver of the crime vehicle was possessing valid driving license to drive light motor vehicle and that in the light of the above decisions, the insurance company cannot disown its liability merely because there was no endorsement on the driving license to drive a light commercial/goods vehicle. It is further submitted that the vehicle involved in the instant case is not a goods vehicle and it is Mahindra Bolero Jeep, which is permitted to carry passengers. Therefore, there was no breach of any condition of insurance policy.

17. In this connection, it is apposite to extract the para Nos.8 to 12 of the said judgment for the purpose of this case, which reads as follows:

> "We find the judgments relied upon cover the issue in favour of the appellants. In Annappa Irappa Nesaria (supra), this Court referred to the provisions of Section 2(21) and (23) of the Motor Vehicles Act, 1988, which are definitions of 'light motor vehicle' and 'medium goods vehicle' respectively and the rules prescribing the forms for the licence, i.e. Rule "20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid licence to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well."
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> 10. In S. Iyyapan (supra), the question was whether the driver who had a licence to drive 'light motor vehicle' could drive 'light motor vehicle' used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed:

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[6] (2015) 2 SCC 186

> "18. 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 (Civil Misc. Appeal No.1016 of 2002, order dated 31.10.2008 (Mad) is, therefore, liable to be set aside." No contrary view has been brought to our notice.
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> Accordingly, we are of the view that there was no breach of any condition of insurance policy, in the present case, entitling the Insurance Company to recovery rights.
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> Accordingly, we allow these appeals, set aside the impugned order of the High Court and restore that of the Tribunal. There will be no order as to costs".

18. Placing reliance on the above decisions, it is submitted that as the driver of the crime vehicle was possessing valid driving license to drive a light motor vehicle, there is no breach of any condition of insurance policy in the present case and therefore, the question of pay and recovery from the insured does not arise.

19. On consideration of the evidence and the observations of the Tribunal in para No.9 of the common Award, and the citations relied on by the learned counsel for respondents/claimants, more particularly, in the light of the judgment in **Kulwant Singh**'s case (6 supra), this Court is of the view that there is no breach of conditions of insurance policy. Admittedly, the vehicle involved in the crime was a light motor vehicle and the driver of the crime vehicle was possessing a valid driving license to drive the vehicle as on the date of accident. Ex.B.2 is the Certificate of Insurance of Goods Carrying Vehicle weighing about 2750 Kgs. It is obvious that the vehicle involved in the accident is Mahindra Bolero Jeep, which is meant to carry passengers and it is not a goods vehicle, as rightly contended by the learned counsel for respondents. Admittedly, the deceased in this case is a third party and there is no privity of contract between the deceased and the insurer and

the contract is between insurer and insured. For the fault of insurer, 3rd party cannot be penalized. Therefore, keeping in view the above decisions and since in this case there is no breach of conditions, this Court holds that the insurer is liable to pay compensation to the respondents/claimants. I do not see any valid grounds to set aside the findings of the Tribunal which held that there is no breach of conditions of insurance policy with regard to valid driving license. Therefore, the question of pay and recovery does not arise in this case. Accordingly, the appellant in both the appeals/insurance company is liable to pay the compensation to the respondents/claimants as I do not see any valid grounds to interfere with the findings of the Tribunal in this regard. Both these appeals are de void of merit and are liable to be dismissed.

20. In the result, both the appeals are dismissed confirming the impugned common award passed by the Tribunal. There shall be no order as to costs.

21. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand closed. No order as to costs.

G. SHYAM PRASAD, J

Dated: .02.2017
Eha/TJMR

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

MACMA Nos. 547 and 548 of 2010

Dt.02/02/2017

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