HON'BLE SRI JUSTICE G.SHYAM PRASAD

MACMA No.1549 OF 2010

JUDGMENT:

This Motor Accidents Civil Miscellaneous Appeal is arising out of the order dated 09.03.2010 in M.O.P.No.1644 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Visakhapatnam (for short "Tribunal").

2. This is an appeal filed by New India Assurance Company Limited, the third respondent in MOP.No.1644 of 2006. The said OP was filed by father and mother of the deceased, claiming compensation of Rs.50,000/- on account of his death in a motor vehicle accident. The Tribunal, on consideration of the evidence of PW.1, RWs.1 and 2 and the documents Exs.A.1 to A.7 and B.1 to B.5, allowed the OP, awarding compensation of Rs.50,000/- along with interest @ 7.5% per annum from the date of petition till realization. Respondents 1 to 3 therein were held jointly and severally liable to pay the compensation to the claimants.

3. The points for consideration in this appeal are:

(i) Whether there is any breach of conditions of insurance policy, as the driver of the crime vehicle was not possessing driving licence?;

(ii) Whether the insurer can be exonerated from its liability?; and

(iii) Whether the award passed by the Tribunal is liable to be set aside?

4. Heard Sri Naresh Byrapaneni, counsel representing Smt.A.Sujatha, learned counsel for the appellant. Notices served to respondents 1 to 3, but none appeared on their behalf. Respondent No.4 refused to receive notice, which amounts to

deemed service. The arguments on behalf of respondents are deemed heard.

5. This is an appeal by the insurer. The main contention of the insurer is that the driver of the crime vehicle was not possessing valid driving licence. It is in violation of Section 181 of the Motor Vehicles Act, 1988 (for short, the Act). Section 181 of the Act reads as follows:

> "**181. Driving vehicles in contravention of Section 3 or Section 4:-** Whoever drivers a motor vehicle in contravention of Section 3 or Section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

6. The plea of insurer is that the driver of the crime vehicle has no licence. When the insurer takes such a plea, the burden is on them to prove that fact. The insurer has taken all necessary steps for production of driving licence. The insurer has summoned the driver to give evidence with regard to driving licence. The driver was examined as R.W.2. His testimony reveals that he was having driving licence, but it was destroyed at the time of accident. Admittedly, the particulars of driving licence are not available for the insurer to find out whether there was any driving licence in the name of the driver of the crime vehicle and whether the licence is valid and effective.

7. This is a case where driver had no driving licence. Insured discharged his burden of examining the driver. He had taken all possible steps for production of driving licence. The testimony of R.W.2 that the licence was destroyed at the time of accident, would clearly show that there was no driving licence available. On the other hand, there are no particulars about the driving licence for

verification also. An adverse inference to be drawn that the driver had no driving licence. As per Section 181 of the Act, whoever drives a motor vehicle in contravention of Section 3 or Section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

8. It was held by the Apex Court in **United India Insurance v. Lehru[1], National Insurance v. Ramkali[2]** and **National Insurance v. Savitri Devi[3]** that the insurance company cannot escape its liability to third parties. It may however in such cases recover the compensation paid by it from the insured.

9. Under the Act, holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accident Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver thereof. It is trite that where the insurers relying upon the provisions of violation of law by the assured takes an exception to pay the assured or a third party, they must prove a willful violation of the law by the assured. In some cases violation of criminal law, particularly, violation of the provisions of the Act may result in absolving the insurers but,

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[1] AIR 2003 SC 1992
[2] (2004) 1 SCC 565
[3] (2004) 1 SCC 596

the same may not necessarily hold good in the case of a third party.

10. In view of the foregoing reasons, as the driver of the crime vehicle has no driving licence, the insurer is not liable to pay the compensation. The owner of the vehicle is liable to pay the compensation. In view of the facts and circumstances of this case, as this is a case of death of a four months old boy, and the very minimum amount of Rs.50,000/- was awarded, the insurer is directed to pay the amount at the first instance and may recover the same from the driver and owner of the vehicle.

11. In the result, the appeal is partly allowed. The appellant is directed to deposit the amount at the first instance, within a period of two months from the date of this order, and may recover the same from the driver and owner of the vehicle i.e., respondents 3 and 4 herein. On such deposit, respondents 1 and 2, who are claimants, are permitted to withdraw the same. The award passed by the Tribunal is modified to the extent indicated above. There shall be no order as to costs.

12. As a sequel, miscellaneous petitions, if any, pending shall stand closed.

G.SHYAM PRASAD, J

Date: 14.02.2017
TJMR