HON'BLE SRI JUSTICE M.S.K.JAISWAL

M.A.C.M.A.No.1189 of 2010

JUDGMENT:

This appeal is filed by the insurance company – 2nd respondent in M.V.O.P.No.618 of 2007, against the award dated 04.03.2009 passed by the learned Chairman, Motor Accident Claims Tribunal-cum-VI Additional District Judge, Kurnool (for short “the Tribunal).

The respondents/claimants filed the claim petition claiming a compensation of Rs.4,00,000/- on account of death of Uppari Buchanna, who died in a motor accident that occurred on 06.04.2007. The claimants are the wife and children of the deceased.

The brief case of the claimants is that on 06.04.2007 at about 2 p.m the deceased boarded the Auto bearing registration No.AP-22-V-2998 at his village Vavilala to go to Santhinagar village and when the auto reached near Sivalayam in Julekal village limits, the driver of the auto drove the vehicle in a rash and negligent manner with high speed, due to which, lost control over the vehicle, as a result, the auto turned turtle, the deceased sustained severe injuries on his head and right hand and while shifting to the hospital, succumbed to injuries. The deceased was aged about 42 years, he was hale and healthy by the time of accident, he was an agriculturist and earning Rs.80,000/- to Rs.1,00,000/- per annum.

The appellant/Insurance Company filed the counter denying its liability. It is further contended that the driver of the offending Auto has no valid licence and the 1st respondent being the owner of the offending Auto, violated the terms and conditions of the policy and the amount claimed by the claimants is excessive and exorbitant.

On behalf of the claimants, P.Ws.1 & 2 were examined and got marked Exs.A.1 to A.5. On behalf of the respondents, RWs.1 & 2 were examined and Exs.B1 to B3 were marked.

The Tribunal, on consideration of the oral and documentary evidence on record, awarded compensation of Rs.3,67,000/- as against the claim of Rs.4,00,000/-. Questioning the said award, the appellant-Insurance Company filed this appeal.

Learned Counsel appearing for the appellant/Insurance Company submits that admittedly there is violation of terms of the policy, inasmuch as, the driver of the auto was driving the transport auto carrying passengers without possessing valid driving license. Even though the driver of the auto had the licence to drive the non-transport auto, he had no authority to drive the transport vehicle and since this violation goes to the root of the accident, the Insurance Company is not liable to pay any compensation. The amount, if any, should be paid only by the insured who is not entitled to be indemnified.

On the other hand, learned Counsel appearing for the respondents/claimants submits that there is no dispute insofar as the driver of the auto possessing non-transport licence, but that cannot be a sole ground on which the liability of the Insurance Company can be absolved. The crime vehicle is an auto and whether it be a transport vehicle or non-transport vehicle, the mechanism thereof, the unladen weight of the vehicle and the driving skills are one and the same. It is further submitted that the driver had non-transport licence for nearly two years prior to the accident and as per the Rules, he is entitled to obtain the transport endorsement within one year after obtaining the non-transport license. Learned Counsel further submits that the Tribunal has properly appreciated the matter and by referring to various authorities held that the Insurance Company is liable to indemnify the insured.

The fact that is not in controversy is that on 06.04.2007, the auto bearing No.AP-22-V-2998 which is owned by the first respondent and insured by the second respondent was being driven by its driver and at about 02.00 p.m., when it reached near Shivalayam in Julekal village, it turned turtle due to the rashness and negligence on the part of the driver of the auto, due to which the deceased Uppari Buchanna, aged 42 years, sustained injuries and succumbed thereto on the way to hospital. The findings insofar as there was rashness and negligence on the part of the driver of the crime auto at the relevant time is not controverted. As already noticed, the main stay of the appellant's case is that the driver had no valid license and hence since it is in violation of the terms of the policy, the Insurance Company is not liable to indemnify the insured.

RW.2 has been examined on behalf of the Insurance Company, who is an official of the Road Transport Authority. It is in his evidence that Ex.B.2 is the Driving Licence of the driver which is a non-transport and the person possessing a non-transport licence is not authorized to drive a transport vehicle. However, it is in the evidence of RW.2 that the type, shape and mechanism for the transport and non-transport autos is one and the same and nothing is brought out on record to show that merely because the driver had no endorsement for driving a transport vehicle, he can be said to be disqualified from driving the transport vehicle. It is also borne out from the record that the driver obtained non-transport auto licence on 22.03.2005 and the accident took place on 06.04.2007. It is not in dispute that the Rules envisage that a person having obtained a non-transport driving licence is eligible to apply for and obtain an endorsement to the effect that he can drive a transport auto and also a batch. No further extraordinary skills are required for obtaining the endorsement. The logic is obvious. Only after driving a non-transport auto for about a year, the driver is supposed to have gained sufficient expertise and therefore he is made eligible to obtain a transport endorsement only after one year of his possessing a non-transport licence.

Learned Counsel appearing on either side have cited several authorities in support of their contentions. What is, however, noticed is that there are conflicting decisions on this aspect and this has been taken note of by the Supreme Court itself in a decision reported in MUKUND DEWANGAN v. ORIENTAL INSURANCE CO.LTD.[1], decided on 11.02.2016. Para 39 of the said Judgment reads as under:-

> "In Ashok Gangadhar Maratha (2000 ACJ 319 (SC); in para 10, S.Iyyapan v. United India Insurance Co. (2013 ACJ 1944 (SC); Kulwant Singh v. Oriental Insurance Co. Ltd. (2014 ACJ 2873 (SC) and Nagashetty v. United India Insurance Co. Ltd. (2001 ACJ 1441 (SC), the view taken is that when driver is holding licence to drive light motor vehicle, he is competent to drive transport vehicle of that category; whereas in New India Assurance Co. Ltd. v. Prabhu Lal (2008 ACJ 627 (SC), the view taken is that before 2001 also it was necessary for a driver possessing licence to drive Light Motor Vehicle to obtain endorsement to drive transport vehicle of that category; whereas in National Insurance Co. Ltd. v. Annappa Irappa Nesaria (2008 ACJ 721 (SC), this Court laid down that before 28.3.2001 there was no necessity for holder of licence to drive light motor vehicle to have endorsement to drive transport vehicle; whereas in New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir (2008 ACJ 2161 (SC) and Oriental Insurance Co. Ltd. v. Angad Kol (2009 ACJ 1411 (SC), the view taken is that it is necessary for holder of light motor vehicle licence to obtain specific endorsement on licence, to drive transport vehicle of the light motor vehicle weight as provided in Section 2(41)"

After referring to the above aspects, the two Judge Bench has referred the matter to a Larger Bench for authoritative pronouncement.

[1] 2016 ACJ 1008

In view of the above, it cannot be said that there is any authority which specifically say that a person possessing non-transport driving licence cannot at all drive a transport vehicle even after becoming eligible therefor and if any accident takes place involving such driver, the Insurance Company can be absolved of its liability to indemnify the insured who has been validly insured under the policy.

In view of the foregoing discussion, I have no hesitation in holding that Tribunal did not commit any irregularity or illegality in fastening the liability for the compensation upon the appellant/Insurance Company. Since there were no other contentions raised, the appeal is liable to be dismissed.

In the result, the appeal fails and the same is dismissed. Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

M.S.K.Jaiswal, J

Date: 28th June, 2017
Dsr/smr