HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 996 of 2010

JUDGMENT:

This appeal is directed against the order dated 19.02.2010 passed in MVOP No.1338 of 2008 by the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Guntur.

2. The appellant is the claimant, filed M.V. O.P.No.1338 of 2008 under Section 163-A of the Motor Vehicles Act, claiming compensation of Rs.1,50,000/-, on account of the injuries and permanent disability sustained by him in a motor vehicle accident occurred on 04.07.2008. The tribunal awarded compensation of Rs.30,000/-.

3. Aggrieved by the award, the appellant has sought for enhancement of compensation.

4. The contention of appellant is that he was working as coolie and earning Rs.100/- per day, but the Tribunal has taken the annual income as Rs.15,000/- and awarded inadequate compensation.

5. It is further contended that the Tribunal has passed award against the owner of the vehicle, exonerating the liability against the insurer of the vehicle-2nd respondent, though he is liable to pay compensation. Reliance was placed on S.Iyyapan Vs. M/S United India Insurance[1] case and contended that the driver of the vehicle has valid licence to drive light motor vehicle but he had driven another type of vehicle. In Iyyapan case, Court held that the insurer shall pay and recover.

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[1] (2013) 7 SCC 62

6. It is relevant to refer to para 8 of the judgment which reads as under:

> *"The counsel for the petitioner pointed out that RW-2 admitted that he is having driving license and shown it and there is no breach of contract. As rightly pointed out by counsel for 2nd respondent, RW-2 stated that he is having driving licence to drive heavy goods vehicle and also light motor vehicle, but not having license to drive motorcycle with gears. The counsel for petitioner pointed out that when the driver having license to drive goods vehicle, it is deemed to be license to drive other vehicles, which are inferior in cadre. This Tribunal is not in agreement with this argument. In case of four-wheeler, this argument cannot be applied but not for two wheeler, for which he should have special skill to drive and balance the vehicle. A person who is having [2]license to drive 'four wheeler' cannot be termed as having requisite skill to drive two-wheeler. As observed by Supreme Court in ORIENTAL INSRUANCE COMPANY LTD. V. ZAHARUNNISA AND OTHERS (2008 SAR (CIVIL) 478). Hence, there is breach of conditions of the policy. What is the effect of the breach has to be seen."*

7. The Tribunal considering the decision reported in *ORIENTAL INSRUANCE COMPANY LTD. V. ZAHARUNNISA AND OTHERS*, has come to a conclusion that there is breach of conditions of the policy and exonerated the liability of the insurance company.

8. The learned counsel for the appellant submitted that the driver of the crime vehicle is having licence to drive heavy goods vehicle and also LMV, but he was not having licence to drive the motor cycle with gear. It is contended that the finding of the Tribunal is incorrect in the light of the decision rendered in Iyyapan case.

9. It is contended that the finding of the Tribunal is incorrect in the light of the decision rendered in Iyyapan case wherein in paras 16, 17 and 18, it was held as under:

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[2] *(2008 SAR (CIVIL) 478)*

16. In the case of National Insurance Company Ltd. v. Annappa Irappa Nesaria alias Nesaragi and Others, 2008 (3) SCC 464, the vehicle involved in the accident was a matador having a goods carriage permit and was insured with the insurance company. An issue was raised that the driver of the vehicle did not possess an effective driving licence to drive a transport vehicle. The Tribunal held that the driver was having a valid driving licence and allowed the claim. In appeal filed by the insurance company, the High Court dismissed the appeal holding that the claimants are third parties and even on the ground that there is violation of terms and conditions of the policy the insurance company cannot be permitted to contend that it has no liability. This Court after considering the relevant provisions of the Act and definition and meaning of light goods carriage, light motor vehicles, heavy goods vehicles, finally came to conclusion that the driver, who was holding the licence duly granted to drive light motor vehicle, was entitled to drive the light passenger carriage vehicle, namely, the matador. This Court observed as under:

"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 authorized to drive a light goods vehicle as well."

17. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.

18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances 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 Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven 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. Hence, in our considered opinion, 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."*

10. In IYYAPAN case, the driver was holding licence to drive light motor vehicle. The vehicle in question was a Mahindra Maxi Cab in that case. The Apex Court held that merely because the driver did not get any endorsement in the driving licence to drive the Mahindra Maxi Cab which is a LMV, the High Court cannot held that the insurer was not liable to pay compensation.

11. In the light of the case in Iyyapan, if the driver of the crime vehicle is possessing a valid driving licence to drive one type of vehicle, there need not be any endorsement for driving another type of vehicle. On that ground, the liability of the insurance company cannot be exonerated. The ratio in the case of Iyyapan is applicable to the facts of the present case. In this case, the accident occurred out of use of motor vehicle in a public place. The deceased is a third party. There is valid licence of insurer. The violation of driving licence cannot differ the legal representatives of the deceased to claim compensation. Since accident is proved, that it occurred due to rash and negligent act of driver of another vehicle, and the same is duly indemnify insurer, he cannot escape it's liability.

12. The deceased is a third party to the insurance policy. The insurance policy is made for the crime vehicle by its owner, Therefore, the owner as

well as the insurer are liable to pay the compensation in this matter. It is for the insurer to proceed against the insured for recovery of the amount.

13. Therefore, in the light of the decision rendered in the case of Iyyapan, the liability of the insurance company cannot be exonerated. The insurer can be ordered to pay and recover the same from the owner of the vehicle. Therefore, the finding of the tribunal in this regard is liable to be set aside.

14. In the result, the appeal is partly allowed. The finding of the Tribunal with regard to exonerating the liability of the insurance company is set aside. The insurance company is directed to pay the compensation in the first instance and recover the same from the owner. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

G. SHYAM PRASAD, J

Date:30.03.2017.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 996 of 2010

Date:30.03.2017

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