HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 1053 of 2010

JUDGMENT:

This appeal is directed against the order dated 26.03.2010 in MVOP No.929 of 2009 by the Chairman, Motor Accidents Claims Tribunal-cum-XI Additional District Judge (FTC), Guntur at Tenali.

2. This is an appeal filed by the appellant-Cholamandalam M.S. General Insurance Company-2nd respondent in MVOP NO.929 of 2009.

3. The respondents 1 and 2-claimants filed the above O.P. under Section 163-A of the Motor Vehicles Act claiming compensation of Rs.2 lakhs on account of the death of one Panthagani Santha Raju in a motor vehicle accident occurred on 21.06.2009.

4. The brief facts of the claim petition filed under Section 163-A of the Motor Vehicles Act are that the parents of the deceased filed a claim petition claiming compensation on account of the death of their son in a motor accident. The deceased who was a boy aged 13 years old while going to school being dashed by an auto owned by the 1st respondent.

5. The first respondent filed written statement before the Tribunal denying the negligence in driving the auto and also denied his liability.

6. The 2nd respondent filed counter stating that the accident occurred due to the negligence of the boy while crossing the road. It was further averred that the driver of the auto was not having valid driving licence and therefore, there is violation of terms and conditions of the policy. As such, there is no liability for the insurer.

7. The Tribunal on consideration of the evidence on record has granted compensation of Rs.2,04,500/- with interest at 7.5% per annum.

8. The appellant being insurer has filed this appeal challenging the order of the tribunal with regard to pay and recovery ordered by the Tribunal.

9. The insurer placed reliance on the case of *Nagappa Vs. Gurudayal Singh*[1] rendered by the Apex Court and submitted that the Tribunal failed to consider the ratio of the decision while granting pay and recovery.

10. In view of the principle laid down by the Apex Court in *Nagappa's case*, where the Apex Court opined that since the provisions of the Act have no restriction to award the compensation more than claimed and in appropriate cases, where from the evidence brought on record, the Courts feel that the claimants are entitled to get more compensation than claimed, the Courts may award such compensation but the only embargo is that it should be 'just compensation', but should neither be arbitrary, fanciful nor unjustifiable from the evidence.

11. Under the M.V. Act, there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award 'Just' compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-section (4) to Section 166, even report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the M.V. Act. If required, in appropriate cases, Court may permit amendment to the Claim Petition.

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[1] 2003 (2) SCC 274

12. The insurer's contention is that under Section 149 of the Motor Vehicles Act, the insurance company can avoid the liability for want of valid and requisite driving licence. The Tribunal having held that there was no driving licence to the driver has to exonerate the liability of the insurance company totally. Instead, the Tribunal has ordered pay and recovery directing the insurance company to pay the amount at the first instance and recover the same from the owner of the vehicle. It is contended that the guidelines laid down by the Apex Court in Nagappa's case were not followed and therefore, the order or the Tribunal is liable to be set aside.

13. The insurer further contends that the insurance company examined RWs.1 and 2 on their behalf. RW-2 was employee of R.T.A. He stated that the driver of the auto involved in the accident was having only licence to drive non-transport vehicle; whereas, the auto involved in the accident was a transport vehicle.

14. At the outset, it is pertinent to note that this is an appeal filed by the insurance company. The main contention is that the driver had driving licence to drive the light motor vehicle. But, the vehicle involved in the accident is a transport vehicle. As such, there is violation of terms and conditions of the insurance policy. When there is no liability for the insurance company, the Tribunal cannot order for pay and recovery. The contention raised by the learned counsel for the appellant-insurer is squarely covered by the decision of the Apex Court in the case of Iyyappan.

15. 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 Iyyappan case wherein in paras 16, 17 and 18, it was held as under:

> *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:*
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> > *"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."*
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> *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.*
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> *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."

16. In IYYAPPAN 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 is not liable to pay compensation.

17. In the light of the case in Iyyappan, 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. In that case, the Tribunal ordered pay and recovery. The ratio in the case of Iyyappan is applicable to the facts of the present case.

18. In the instant case also the facts are similar. In this case, the vehicle involved in the accident is an auto. There is no material on record to show that it was a goods vehicle. It was carrying passengers in which the deceased travelling. The auto dashed against the cycle of the deceased boy. The deceased boy is a third party. The insurer of the auto cannot

escape from the liability on the ground that the driver of the auto was not having valid driving licence.

19. In the light of the above decision, the insurer cannot escape from the liability. Therefore, the order of the Tribunal directing the insurance company to pay and recover the same holds good. Therefore, there are no valid grounds to interfere with the findings of the Tribunal in ordering pay and recover the amount by the insurance company.

20. As far as the quantum of compensation awarded by the Tribunal is concerned, it does not require any interference as the Tribunal has rightly calculated the compensation by taking the age, and notional income of the boy. Since this is an appeal by the insurer, the claim whatever it may be, the respondents-claimants for enhancement of compensation cannot be entertained in this appeal. The scope of this appeal is very limited to the extent that the liability and the quantum of compensation which is under challenge. There is no evidence on record to show that the accident occurred due to negligence of the deceased boy. I do not see any valid reasons to interfere with findings of Tribunal in which the driver of the vehicle liable.

21. In view of the foregoing reasons, there are no merits in this appeal.

22. In the result, the appeal is dismissed. The order passed by the Tribunal in O.P.No.929 of 2009 is confirmed. 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:31.03.2017.
ccm

HON'BLE SRI JUSTICE G. SHYAM PRASAD

<u>M.A.C.M.A. No. 1053 of 2010</u>

<u>Date:31.03.2017</u>

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