THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 1354 of 2013

JUDGMENT:

This appeal is arising out of the Judgment and Decree dated 17.08.2012 in O.P.No.540 of 2007 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-V Additional District Judge (FTC), R.R. District.

2. Brief facts of the case are that on 14.02.2007, at about 2:30 PM, the appellant-claimant was proceeding on National Highway No.9 on his Hero Honda Passion Plus Motorcycle bearing No.AP-29N-2600, to go to Hyderabad, and when he reached near temple at Laxmireddypalem of Hayatnagar Mandal, a Hero Honda Passion Plus motorcycle bearing No.AP-29P-7559, driven by its rider in a rash and negligent manner, dashed the appellant's motorcycle. As a result, the appellant fell down and received grievous injuries. He was shifted to Yashoda hospital, Malakpet, Hyderabad, for treatment. He suffered three fractures and a blunt injury on his chest. Alleging that the accident occurred due to rash and negligent driving by the rider of Hero Honda Passion Plus motorcycle bearing No.AP-29P-7559, the claimant filed the aforesaid O.P. claiming compensation of Rs.2,00,000/- against respondents 1 and 2, the owner and the insurer of the offending motorcycle.

3. The Tribunal awarded compensation of Rs.1,22,432/- holding the respondent No.1 liable for payment of compensation and exonerating the liability of the respondent No.2-insurer. Aggrieved by the order of the Tribunal exonerating the liability of respondent No.2, and awarding inadequate compensation, the appellant filed this appeal.

4. Heard the arguments of learned counsel for the appellant Sri. C. Mohan Prakash, and learned counsel Sri P. Haranath Gupta, Amicus Curiae.

5. Learned counsel for the appellant mainly submitted that the Tribunal considered the judgment rendered by the Hon'ble Supreme Court in National Insurance Company v. Swaran Singh[1], and came to an erroneous conclusion that there is no liability for the insurer. The counsel referred to paragraph 108 and sub-para (iii) of paragraph 110 of the Swaran Singh (1 supra) case, which read as under:

> ***"108. Although, as noticed hereinbefore, there are certain special leave petitions wherein the persons having the vehicles at the time when the accidents took place did not hold any licence at all, in the facts and circumstances of the case, we do not intend to set aside the said awards. Such awards may also be satisfied by the petitioners herein subject to their right to recover the same from the owners of the vehicles in the manner laid down therein. But this order may not be considered as a precedent.***
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> ***110. ……***
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> ***(iii). The brach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to theinsurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time."***

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[1] 2004 ACJ 1

6. Learned counsel for the appellant has also referred to the decision of the Hon'ble Supreme Court in Kusum Lata and others v. Satbir and others[2], and has drawn the attention of the Court to paragraph 13, which reads as under:

> ***"13. In respect of the dispute about licence, the Tribunal has held and, in our view rightly, that the insurance company has to pay and then may recover it from the owner of vehicle. This court is affirming that direction in view of the principles laid down by a three-Judge Bench of this court in the case of National Insurance Co. Ltd. v. Swaran Singh, 2004 ACJ 1 (SC)"***

7. Per contra, learned Amicus Curiae Sri P. Haranath Gupta placed reliance on the decision in Sardari and others v. Sushil Kumar and others[3], paragraphs 5 and 12 of which read as under:

> ***"5. The learned Tribunal answered the relevant issue in the following terms:***
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> > ***15. It is admitted by Respondent 1 that he was not holding any driving licence to drive the tractor at the time of alleged accident and in fact he never possessed any driving licence. Since Respondent 1 was not holding any driving licence to drive the tractor, so, in view of the conditions contained in the copy of policy, Ext.R-1, Respondent 3 is not liable to pay any compensation. Accordingly, this issue is decided in favour of Respondent 3 against the petitioners.***
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> ***"12. The question came up for consideration before this Court in United India Insurance Co. Ltd. v. Gian Chand[4] wherein it was held:***
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> > ***12. Under the circumstances, when the insured hadn handed over the vehicle for being driven by an unlicensed driver, the Insurance Company would get exonerated from its liability to meet the claims of the***

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[2] 2011 ACJ 926
[3] (2008) 17 SCC 208
[4] (1997) 7 SCC 558

> ***third party who might have suffered on account of vehicular accident caused by such unlicensed driver."***

8. Learned Amicus Curiae also relied on the decision in National Insurance Co., Ltd., Eluru West Godavari District v. Dupati Singaiah and others[5], wherein paragraph 14 reads as under

> ***"14. . . . . (i) in case where driver of vehicle admittedly did not hold licence and the same was allowed consciously to be driven by owner of the vehicle, the insurer is entitled to exoneration from its liability; . . .***

9. Learned Amicus Curiae, placing reliance on the above two decisions, i.e. Sardari (3 supra) and Dupati Singaiah (5 supra), contended that incase where the driver is not having valid driving licence to drive the vehicle in question, or if the owner of the vehicle consciously allowed the driver knowing that he did not hold a valid driving licence, the liability of the insurance company is exonerated. He further submitted that in this case, the driver of the crime vehicle was not having valid driving licence and therefore, the Tribunal has rightly held that the liability of the insurer is exonerated.

10. Adverting to the submissions made by the learned Amicus Curiae, the learned counsel for the appellant, placing reliance on Swaran Singh (1 supra) and Kusum Lata (2 supra), contended that the burden is on the insurer to prove that the owner of the vehicle has allowed the driver to drive the vehicle knowing that the driver has no valid driving licence to drive the vehicle.

[5] 2009 (3) ALD 616

11. It is not disputed that the owner remained *ex parte* before the Tribunal and the insurer has not filed any petition under Section 170 of the Motor Vehicles Act, seeking permission to raise the defences on behalf of the owner of the crime vehicle. The impugned judgment is silent on this aspect and there is no material on record to show that insurer has filed any such petition before the Tribunal to take defences on behalf of the owner of the crime vehicle. Even on this count, the insurer has failed to prove that the driver of the crime vehicle was not holding valid driving licence.

12. Learned counsel for the appellant has also relied on the decision in Oriental Insurance Co. Ltd., Dhanbadh, Bihar State v. Dumpa Haritha and others[6], wherein paragraph 16 reads as under:

> ***"16. . . . .The Tribunal further observed that if really the driver had no valid licence, he would have been charge-sheeted under Section 3 read with 181 of the Act, but the police did not charge sheet him under the said section. The Tribunal, ultimately, held that the driver of the offending vehicle had valid and effective driving licence to drive the vehicle as on the date of accident."***

13. Learned counsel for the appellant, placing reliance on Dumpa Haritha (6 supra) contended that since the police did not register any case against the driver of the crime vehicle, for the offence punishable under Section 3 r/w 181 of the Act, it is deemed that the driver of the crime vehicle was having a valid driving licence at the time of accident.

14. In view of the facts and circumstances of the case, it is obvious that the insurance company has not filed any petition under Section 170 of the Motor Vehicles Act, before the Tribunal when the owner of the

[6] 2011 (2) ALD 838 (DB)

crime vehicle has remained *ex parte*. Since theinsurer has not filed petition under Section 170 of the Act, he cannot take the defences on behalf of the owner in this appeal. On the other hand, there is no material on record to show that the owner had consciously entrusted the vehicle to the driver knowing well that the driver was not having valid driving licence. In the absence of any evidence in this regard, the liability of the insurer cannot be exonerated.

15. It is also obvious that in the light of the decision in Dumpa Haritha (6 supra), no case was registered under Section 3 r/w 181 of the Act, by the police that the driver was not having valid driving licence. Therefore, it is deemed that the driver was having valid and effective driving licence by the date of accident.

16. In view of the foregoing reasons, it is obvious that the Tribunal has exonerated the insurer from the liability of paying the compensation without considering all these aspects. Therefore, I hold that the insurer is liable to pay the compensation.

17. Learned counsel for the appellant contended that the quantum of compensation awarded by the Tribunal is inadequate. He submitted that the Medical Board constituted by the Osmania General Hospital, for the purpose of assessing the disability of the appellant, has issued Ex.P10-disability certificate showing the disability of the appellant at 40% to his left leg. The learned counsel submits that though the Tribunal has taken into consideration the disability certificate, it awarded a meager amount of Rs.25,000/- for the disability suffered by the appellant.

18. The appellant has claimed an amount of Rs.1,05,000/- towards compensation for the permanent disability of 40% suffered by him to his left leg. The Tribunal has awarded Rs.25,000/- on the ground that the appellant has not examined any of the doctors in the Medical Board with regard to the said 40% disability. Therefore, as contended by the learned counsel for the appellant, it is apparent that the Tribunal has not taken into consideration the 40% disability of the appellant. Hence, the amount awarded by the Tribunal for the permanent disability is enhanced from Rs.25,000/- to Rs.75,000/-.

19. It is further submitted that the appellant has claimed an amount of Rs.65,000/- towards medical expenditure, whereas the Tribunal has awarded only Rs.25,000/-.

20. It is obvious that the Tribunal has not considered the medical bills properly and awarded an amount of Rs.25,000/- under the Head of Extra nourishment and medical bills. In this regard, it is appropriate to refer to the evidence of PW2-Orthopedic Surgeon from Yashoda Hospital. His testimony reveals that Ex.A3 is the Injury Certificate and Ex.A6 is the Discharge Summary certificate. Ex-A7-Hospital final bill for Rs.27,606 and Ex.A8-medical bill for Rs.7,826/- are also issued by Yashoda Hospital. It is obvious that the injuries suffered by the appellant are grievous in nature and there was necessity for surgery but the appellant refused to undergo the surgery. He further stated that for future operation, approximate cost of Rs.10,000/- is required. Therefore, in the facts and circumstances of the present case, an amount of Rs.35,432/- is awarded towards medical expenditure.

21. It is submitted that the appellant made a claim of Rs.20,000/- towards pain and suffering but the Tribunal awarded Rs.12,000/-. On consideration of the evidence, an amount of Rs.20,000/- is awarded towards pain and suffering.

22. On consideration of the evidence on record, the award of the Tribunal is modified as shown in the tabular format below:

Head	Compensation awarded by the Tribunal	Compensation enhanced
Hospital treatment, medical bills	Rs.35,432/-	Rs.35,432/-
Transport charges	Rs.2,000/-	Rs.5,000/-
Extra nourishment & medicine	Rs.25,000/-	Rs.25,000/-
Pain and suffering	Rs.12,000/-	Rs.20,000/-
40% disability	Rs.50,000/-	Rs.75,000/-
Loss of earnings	Rs.10,000/-	Rs.12,000/-
Total	Rs.1,34,432/- (calculated erroneously as Rs.1,22,432/-)	Rs.1,72,432

23. In the result, the appeal is allowed in part, by modifying the award passed by the Tribunal, enhancing the compensation from Rs.1,34,432/- to Rs.1,72,432/- with proportionate costs and interest at 7.5% per annum from the date of petition till realization. The respondents 1 and 2 are jointly and severally liable for payment of compensation within two months from the date of receipt of a copy of this order. The 2nd respondent-insurer is directed to deposit the entire compensation, at the first instance, and recover from the 1st respondent, according to the procedure contemplated under law. On such deposit, the appellant is permitted to withdraw the entire amount.

24. Learned counsel Sri Haranath Gupta, has assisted this Court as Amicus Curiae, with regard to the liability of the insurer for payment of compensation, challenged in this appeal.

No costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

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GUDISEVA SHYAM PRASAD, J

16th March, 2017

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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

<u>M.A.C.M.A. No. 1354 of 2013</u>

16th March, 2017

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