HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 757 of 2010

JUDGMENT:

Aggrieved by the order and decree dated 05.01.2010 passed in O.P.No.784 of 2007 by the VII Additional Metropolitan Sessions Judge-cum-XXI Additional Chief Judge, Hyderabad (for short, 'the Tribunal'), the claimant preferred this appeal.

2. Brief facts of the case are that on 14.03.2007, at about 10.30 AM, while the claimant was going in her car bearing No.AP 28AM 7791 and reached near Attapur Bridge, a lorry bearing No.AP 28W 9216, belong to the 2nd respondent, came from behind and dashed her car and, due to the impact, her car dashed against an electric pole. Alleging that the accident occurred due to rash and negligent driving by the driver of the crime lorry, she filed the claim petition claiming compensation of Rs.5,00,000/- against the respondent Nos.1, 2 and 3, the driver, the owner, and the insurer of the crime lorry, on account of the damage caused to her car in the accident.

3. The respondent Nos.1 and 2, who are the driver and the owner of the crime lorry, had remained ex parte. The respondent No.3-insurer filed counter contending that there is no negligence on the part of the driver of the crime lorry. It was also averred in the counter that the driver of the crime lorry had no valid driving licence at the time of accident, and therefore, the insurer is not liable to pay compensation.

4. Based on the above pleadings, the Tribunal framed the following issues for trial:

> (1) Whether the accident took place on 14-3-2007 at out 10.30 am due to the rash and negligent driving of the Lorry AP-28W-9126, by its driver?
>
> (2) Whether the petitioner is entitled to claim compensation from the respondents? If so, from whom and to what amount?
>
> (3) To what relief?

5. On behalf of the claimant, PW1 was examined, and documents Ex.A1 to A10 were marked. On behalf of respondent No.3, RW1 was examined, and documents Exs.B1 and B2 were marked.

6. On consideration of the evidence of PW1 and RW1, and documents Exs.A1 to A10, and Ex.B1 and B2, the Tribunal held that the accident occurred due to the rash and negligent driving by the driver of the crime lorry, and awarded compensation of Rs.3,50,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realization, against respondent Nos.1 and 2, the driver and the owner. The claim against respondent No.3-insurer was dismissed on the ground that the driver of the crime lorry was not possessing valid driving licence at the time of accident.

7. Aggrieved by the order of the Tribunal, the claimant filed this appeal for enhancement of compensation, and for fixing liability against respondent No.3-insurer.

8. Heard the arguments of Ms. Manjari S. Ganu, learned counsel for the appellant-claimant; and Sri Nisaruddin Ahmed Jeddy, learned counsel for respondent No.3-insurer.

9. Learned counsel for the appellant-claimant contended that the Tribunal held the issue of rash and negligence against respondent No.1-driver of crime lorry and, therefore, respondent Nos.2 and 3 are liable to pay compensation, but the Tribunal exonerated the respondent No.3. Learned counsel further contended that the crime lorry has a comprehensive insurance policy, and as per the decision of the Hon'ble Supreme Court in National Insurance Co. Ltd. v. Swaran Singh[1]; New India Assurance Co. Ltd., v. Kamala[2]; and Oriental Insurance Co. Ltd., v. Nanjappan[3], the appellant, being a third party, is entitled to compensation against the insurer even in case of breach of conditions of policy and the insurer is liable to pay compensation to the claimants, at the first instance, and recover the same from the owner of the crime vehicle.

10. Per contra, learned counsel for respondent No.3-insurer contended that this is a case of own damage caused due to rash and negligent driving, and therefore the claimant cannot claim any compensation for own damages. Relying on National Insurance Co. Ltd., v. J. Maheshwaramma[4]; and United India Insurance Co. Ltd., v. Suman Kanti Saha[5], it is contended that though damages can be awarded to a third party, but in the instant

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[1] (2007) 3 SCC 297
[2] 2001 ACJ 843 (SC)
[3] AIR 2004 SC 1630
[4] (2009) 13 SCC 188
[5] 2016 ACJ 2566

case, the appellant is not a third party and her claim for own damage caused to her car, cannot be entertained. It is submitted that even if the Court is inclined to grant compensation to the claimant for the damage caused to her car, it is to be restricted to Rs.6,000/-, as per Section 147 of the Motor Vehicles Act.

11. The decisions relied upon by the learned counsel for the respondent No.3, are not applicable to the present case. As a matter of fact, the accident occurred out of the use of motor vehicle in a public place. The Tribunal held that the accident occurred due to rash and negligent driving by the driver of crime lorry. The claimant is undoubtedly a third party. The Tribunal exonerated the liability against the insurer on the ground that the driver of the crime lorry had no valid driving licence at the time of accident. The finding of the Tribunal that the driver was not possessing valid driving licence was based on the contents of Ex.B1-Charge sheet. The contents of the charge sheet are not an evidence. The burden is on the insurer to plead and prove that the driver of the crime vehicle is not possessing valid driving licence at the time of accident, and that the owner of the crime vehicle has entrusted the vehicle knowingly that the driver has no driving licence to drive the vehicle. There is no evidence on record to show that the 2nd respondent-owner of the crime vehicle has entrusted the vehicle to the driver, with knowledge that the driver has no valid driving licence. Mere mention in Ex.B1-charge sheet that a case was registered against the driver of the crime vehicle under Section 181 of the Motor Vehicles Act, 1988, is not a

conclusive proof that the driver did not have valid driving licence at the time of accident.

12. It is pertinent to note that except relying on the fact that a case was registered against the driver of the crime lorry for an offence punishable under Section 181 of the Motor Vehicles Act, 1988, the insurer has not taken any steps to prove that there is no driving licence to the driver of the crime vehicle, and that the owner has entrusted the vehicle to the driver despite knowledge that the driver had no valid driving licence. Therefore, the liability of the insurer cannot be exonerated on that point. Further, the crime lorry has a comprehensive insurance policy and the appellant, being a third party, is entitled to claim compensation for the damage caused to her car, and therefore, the Tribunal ought to have fixed the liability against respondent No.3-insurer. Therefore, on consideration of the evidence available on record, it can be safely concluded that this is a fit case in which pay and recovery can be ordered.

13. With regard to the quantum of compensation, I am of the view that the Tribunal has rightly considered the evidence, along with Ex.A6-estimate for repairs, and awarded adequate compensation of Rs.3,50,000/-, which does not require any interference.

14. In the result, the appeal is partly allowed, directing the respondent No.3-insurer to pay the compensation to the appellant-claimant, at the first instance, and later recover the same from the respondent No.2-owner of the crime lorry, as per the procedure contemplated in National Insurance Co. Ltd., v. Chella

Bharathamma and others[6]. No costs. Miscellaneous petitions, if any pending, shall stand closed.

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GUDISEVA SHYAM PRASAD, J

12th April, 2017

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[6] AIR 2004 SC 4882

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