THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 3798 of 2012

JUDGMENT:

This Motor Accident Civil Miscellaneous Appeal is filed by the New India Assurance Company Limited, challenging the Judgment dated 01.03.2012 passed in M.V.O.P.No.75 of 2011 on the file of MACT-cum-Additional District Judge, West Godavari, Kovvur.

2. This is a case of death of Kallepalli Satya Vijaya Raju in a motor vehicle accident that occurred on 31.12.2008. The deceased was aged 20 years studying 3rd year Engineering Degree in St. Teresa Engineering College, Garividi. The respondents 1 to 3 have filed a petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.15,00,000/- against the 1st respondent-driver, 2nd respondent-owner and the 3rd respondent-insurer.

3. The facts of the case are that, on the fateful day, the deceased was going along with his friend on a motor cycle bearing No.AP-35H-9558 from Vijayanagaram to Garividi. The deceased was riding the motorcycle and his friend Sivaramakrishna was pillion rider. At the time of accident, the deceased was proceeding slowly on the left side of the road and when he reached Atchuthapuram village, Gurla mandal, Vijayanagaram District,, one autorickshaw bearing No.AP-35-U-3604 driven by the 1st respondent-driver in a

rash and negligent manner, at a high speed, dashed the motorcycle from the opposite direction. As a result of which the deceased sustained grievous injuries and died on the spot. The pillion rider sustained grievous injuries and two passengers in the autorickshaw also sustained grievous injuries.

4. The 1st respondent-driver and the 2nd respondent-owner of the autorickshaw remained exparte. The 3rd respondent-insurer filed written statement denying the allegations in the claim petition contending that the deceased did not possess valid driving licence to ride the motorcycle.

5. It is the case of collision of two vehicles, the motorcycle and auto, but the owner and insurer of the motorcycle are not added as parties though they are necessary parties in the petition. The petition is bad for non-joinder of necessary parties and is liable to be dismissed. The driver is not possessing valid driving licence to drive passenger auto and the 2nd respondent-owner does not have valid registration permit certificate for the auto.

6. The claimants are put to strict proof of the age and that their claim is highly excessive.

7. The Tribunal, on consideration of the evidence of the witnesses on behalf of the claimants who are PWs.1 to 3 and the

documents Ex.A1 to A13 and on behalf of the respondents, the witnesses RWs.1 to 5 and the documents Ex.B1 to B8 and the documents Ex.X1 to X3, had allowed the claim petition awarding a sum of Rs.8,30,250/- with proportionate costs and interest at 7.5% per annum and fixed the liability against the respondents 2 and 3, the owner and the insurer of the crime vehicle.

8. The Tribunal, with regard to the 1st issue on rash and negligence, held the driver of the crime auto and also the rider of the motorcycle liable for accident and apportioned the liability of 75% on the driver of the auto and 25% on the rider of motorcycle.

9. As far as 2nd issue, i.e., age of the deceased is concerned, the Tribunal did not arrive at any conclusion with regard to the age of the deceased as there was dispute with regard to his age as to whether he was 20 years old by the date of accident. However, the Tribunal has made a guess work with regard to the parents of the deceased and came to the conclusion that the mother of the deceased cannot be 34 years by the date of accident as she could not have conceived at the age of 14 years to get a son who is aged 20 years old now. On that basis that the age of the father of the deceased as 43 years and the mother of the deceased as 40 years and his sister was 20 years, the Tribunal has taken the age of the motor of the deceased for the purpose of ascertainment of loss of earnings.

10. No doubt, this point has not been raised by either of the parties in their arguments before this Court. However, it is to be taken that the deceased was major by the date of accident as the claim of the petitioners was he was 20 years old and the Tribunal has taken the age of the deceased as around 19 years by the date of accident. Therefore, the deceased was major by the date of accident, as he was 3rd year Engineering student.

11. It is contended on behalf of the appellant-insurer that when it is a case of Head-On collision, the liability cannot be apportioned at 75%-25% ratio, but it has to be apportioned at 50%-50% ratio.

12. Learned counsel for the claimants contended that this is not a case of Head-On collision and the entire liability is on the driver of the auto and there is no negligence on the part of the rider of the motorcycle and, as such, the apportionment made by the Tribunal at 75%-25% is incorrect.

13. The Tribunal, on consideration of the evidence of the witnesses, came to the conclusion that the apportionment of negligence at 75%-25% is reasonable. It is observed that the damage sustained to the auto established that the auto was also proceeding at a very high speed and Ex.A2-Motor Vehicle Inspection Report shows that the front shield glass, dashboard and roof, upholstery, front wheel shock, central body are damaged. It is

observed by the Tribunal that if the auto was going at a normal speed and only the motorcycle came at a high speed, such damage would not have occurred.

14. The findings of the Tribunal does not require interference for apportioning the liability. It is evidenced from the record that the auto came at a high speed and dashed the motorcycle resulting in the instantaneous death of the deceased. It clearly reveals that the driver of the auto was driving rashly and negligently.

15. It is also pertinent to note that the rider of the motorcycle was riding on the left side of the road. Unless the driver of the auto was driving in a rash and negligent manner, such accident would not have occurred resulting in the instantaneous death of the deceased who was coming on a motorcycle. Therefore, I do not see any valid reasons in interfering with the finding of the Tribunal in apportioning the liability at 75-25%.

16. It is contended by the learned counsel for the insurance company that the Tribunal has taken the notional income of the deceased as Rs.12,000/- per month, which is highly excessive and which is not supported by any proof and any evidence.

17. In fact the Tribunal has placed reliance on the decision in the case of B. Ramulamma v. Venkatesh Bus Union,

Lingarajapuram, Bangalore and another[1], wherein, in a case of death of computer engineer who was studying in final year, the Court has taken his notional income as Rs.20,000/- and fixed the minimum income at Rs.12,000/- excluding other emoluments. The Tribunal, basing on the decision, has taken the income of the deceased at Rs.12,000/- per month.

18. The contention of the appellant that the Tribunal has taken the income as excessive cannot be considered in view of the judgment in Ramulamma (1 supra). The deceased was an engineering student and if he completed engineering, he would have definitely earned more than Rs.20,000/-.

19. If his future prospects are taken into account, in view of the decision of the Hon'ble Supreme Court in Santosh Devi v. National Insurance Co. Ltd. And others[2] and Rajesh v. Rajbir Singh[3], 50% of the salary has to be added as future prospects. In the present case, the Tribunal has not added any future prospects to the income of the deceased, and therefore, the income taken by the Tribunal is not on the higher side and is quite reasonable. Therefore, it does not require any interference.

---

[1] 2009 (6) ALD 684 (D.B.)

[2] 2012 ACJ 1428

[3] 2013 ACJ 1403

20. Lastly, it is contended on behalf of the insurance company that the driver of the vehicle was not having valid driving licence, as such, there is violation of terms and conditions of the insurance policy.

21. In this regard, it is appropriate to refer to the evidence adduced by the insurance company before the Tribunal. RW2 has filed Ex.X2-driving licence extract of the 1st respondent and deposed that as per the entries in the driving licence, the 1st respondent was authorized to drive the motorcycle with gear and light motor vehicle (both transport and non-transport). He deposed in respect of Ex.X2, the driving licence of 1st respondent that the 1st respondent was not authorized to drive autorickshaw as the autorickshaw is a separate class of vehicle and it needs separate endorsement on the licence. He has also produced Ex.X3-proceedings of the Transport Commissioner dated 28.6.2007 to the effect that autorickshaw is a separate class of vehicle and needs separate endorsement on the driving licence. If there is no such endorsement, the 1st respondent has to be considered as he is not having valid driving licence. It is also pertinent to note that RW2 admitted in his cross-examination that unladen weight of the vehicles upto 7500 Kg are to be categorized as Light Motor Vehicle and as per registration certificate of autorickshaw AP-35-U-3604 Ex.A-13 registration certificate, the unladen weight of the passenger auto was 3500 Kg only.

22. The Tribunal has given a clear finding basing on the evidence of RW2 that the passenger auto involved in the accident comes under light motor vehicle. Ex.X2-driving licence shows that the driving licence of 1st respondent shows transport and non-transport driving licence with Batch No.4630. Therefore, it is obvious that the driver of the crime vehicle was possessing a valid driving licence by the date of accident.

23. The finding of the Tribunal in paragraph 19 will clinch the issue which reads as under:

> ***"19. Coming to the aspect of liability, it is not in dispute that the crime Auto AP 35V 3647 was insured by the 2nd respondent with the 3rd respondent insurance company and it is not in dispute that the policy is in force. The 3rd respondent made an attempt to avoid its liability alleging that the 1st respondent does not possess valid driving licence. Further through RW2 the 3rd respondent exhibited Ex.X2 the driving licence extract of the 1st respondent RW2 deposed that as per the entries in the driving licence the 1st respondent is authorized to drive the motor with gear and Light motor vehicle (both transport and non transport). But he deposed that as per the Ex.X2 the 1st respondent is not authorized to drive the Auto rickshaw, as auto rickshaw is a separate class of vehicle and it needs separate endorsement. RW2 also produced Ex.X3 the proceedings of the Transport Commissioner dated 28.6.2007 to the effect that the Auto rickshaw is a separate class of vehicle and needs separate endorsement on the driving licence. He deposed as if since Ex.X2 driving licence has no such separate endorsement, the 1st respondent has no valid driving licence. But in the cross examination RW2 admits that the vehicles with unladen weight upto 7500 KGs are categorized as Light Motor Vehicle and he also admits that as per the R.C. of the Auto rickshaw AP 35U 3604 marked as Ex.A13. The unladen weight of that passenger Auto is 350 Kgs only. As such the crime Auto comes under the light motor vehicle. As seen from Ex.X2 driving licence, the 1st respondent was given transport as well as non transport licence with a badge number 4630. Even as per the circular referred by***

RW2 vide Ex.X3, it is mentioned that to drive a 3 wheeler transport. Auto rickshaw driver must hold a 3 wheeler non transport driving licence and after satisfying that that he is more than 20 years age and he has completely one year experience on the non transport auto, his entitled for licence of the transport auto rickshaw. As seen from Ex.X2 the non transport Auto Rickshaw driving licence was given to the 1st respondent on 225.2004 after completion of 20 years of age. The transport LMV driving licence was given to him in the year 2006. As such Ex.X2 satisfies even Ex.X3 circular as such there are no merits in the contentions of the 3rd respondent that there is any violation of the motor vehicles rules by the 1st respondent in driving the passenger Auto. As such the 3rd respondent insurer is liable to indemnify the 2nd respondent owner of the vehicle and now the respondents 2 and 3 are liable to pay compensation above awarded."

24. Even in the light of the decision reported in S. Iyyapan v. United India Insurance Co. Ltd.[4], it was clearly held that the driver holding a valid driving licence to drive light motor vehicle drives a commercial vehicle, he is deemed to have valid driving licence. It was observed in paragraphs 18 and 19 of the Iyyapan (4 supra) judgment, as under:

"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

---

[4] (2013) 7 SCC 62

> ***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.***
>
> ***19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.***

25. It is obvious that as per the findings of the Tribunal, the driver of the vehicle was holding valid driving licence. Even if the argument of the learned insurance company is taken into consideration that the driver of the crime vehicle is not having valid driving licence to drive a transport vehicle, even then since the driver is possessing a light motor vehicle licence, he is entitled to drive a commercial vehicle. Therefore, in the light of the findings of the Tribunal and in the light of the decision rendered in Iyyapan (4 supra), there is no violation of terms and conditions of the insurance policy as the driver was possessing a valid driving licence by the date of accident.

26. It is pertinent to note that the deceased involved in the accident is a third party and therefore his rights cannot be prejudiced even if there is any violation of terms and conditions of

the insurance policy. However, in the instant case, there is no violation of terms and conditions of insurance policy and therefore I do not see any valid ground to interfere with the findings of the Tribunal in holding that the driver of the crime vehicle was having valid driving licence by the date of accident.

27. It is also pertinent to observe that the accident occurred due to rash and negligent driving by the driver of the opposite vehicle and therefore this contention cannot be taken into consideration as valid contention.

28. In view of the facts of the case, I do not see any merit in the appeal.

29. In the result, the appeal is dismissed, and the judgment of the Tribunal in O.P.No.75 of 2011 is confirmed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

30 March, 2017

ksm

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 3798 of 2012

30th March, 2017

ksm