HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 1797 of 2010

JUDGMENT:

1. The appellant/Insurance Company aggrieved by the Award and decree dated 22.06.2010 passed in OP.No. 820 of 2008 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-V Additional District Judge (FTC), Guntur preferred this appeal for the following among other grounds that at the time of accident, the driver did not possess valid and effective driving licence, however, the Tribunal saddled liability on the appellant-Insurance Company. It is contended that Tribunal did not discuss its liability as to why it (Insurance Company) should pay the compensation amount more so when there is breach of specified conditions of the policy as contained in Section 149(2) of the MV Act.

2. It is further contended that the Tribunal erroneously estimated the disability on higher side and awarded compensation on higher side

3. On the other hand, the first respondent/claimant contended that the Tribunal considering the settled law, ordered 'pay and recover' ; that there is no error apparent on the face of

the record and that the Award does not suffer from any legal infirmities warranting interfere of this Court.

4. The case of the first respondent/claimant is that on 21.04.2008 at about 10.30 PM while the first respondent/claimant was traveling in the auto rikshaw bearing No. AP 27 X 0688 and when it reached at Peddaraveedu village, the first respondent-driver of auto bearing No. AP 27 W 9394 having driven in rash and negligent manner, with high speed and without taking proper care and caution, came in opposite direction and hit the auto in which he (claimant) was traveling, as a result of which, he fell down and sustained grievous injuries to his right thigh and knee. He further stated that he suffered 22% disability, which is permanent and partial.

5. Based on the rival contentions, the Tribunal framed the following issues for settlement:

1. Whether the accident occurred due to rash and negligent driving of the driver of the auto bearing No. AP 27 W 9394 driven by its driver that resulted in injuries to the petitioner ?
2. Whether the petitioner is entitled to compensation, and if so, to what amount and against whom ?
3. To what relief ?

6. In order to prove respective claims, the first respondent/claimant examined P.Ws.1 and 2 and got marked Exs.

A.1 to A.6 and X.1. On behalf of the appellant/Insurance Company and second respondent, R.Ws.1 and 2 were examined and got marked Exs. X.2 and X.3.

7. It is pertinent to note that since the first respondent/claimant filed the claim petition under Section 163-A of M.V. Act, he need not prove the rash and negligent driving of the driver of the offending vehicle and it is sufficient it if is proved that offending vehicle was involved in the accident.

8. The first respondent/claimant himself was examined as P.W.1 and the Doctor who treated him was examined as P.W.2. The clinching evidence of P.W.1/claimant was that on 21.04.2008 at about 10.30 PM while he was traveling in the auto bearing No. AP 27 X 0688 to go to Peddaraveedu village from Dornala on Markapuram-Dornala Road, and when the said auto reached near Badveedu Cherlopalli village, the driver of auto bearing No. AP 27 W 9394 having driven in rash and negligent manner, with high speed and without taking any proper care and caution, hit the auto in which he(claimant) was traveling. In the said accident he fell down and sustained grievous fractures to his right thigh and knee and other injuries all over his body. To that effect, the first respondent/claimant presented the complaint narrating the manner in which accident took place.

9. The Investigating Officer after thorough investigation filed charge sheet-Ex.A.3 against the second respondent-driver of auto bearing No. AP 27 W 9394 stating that while the first respondent/claimant was traveling in auto of Purnakanti Lakshmaiah to go to Peddaraveedu and when the said auto reached near Badveeducherlopalli, the second respondent-D.Khasim drove his auto in a rash and negligent manner, with high speed, came in opposite direction without taking any proper care and caution, and hit the auto in which the first respondent/claimant was traveling. Therefore the evidence of P.W.1 supported by Ex. A.1 to A.3 goes to suggest that auto bearing No. AP 27 W 9394 was involved in the accident.

10. The contention of the learned Counsel for the appellant-Insurance Company is that the driver of the offending auto was not having valid and effective driving licence and hence the order of the Tribunal in ordering it (Insurance Company) to 'pay and recover' is illegal and not sustainable. In support of its contention, the appellant examined R.Ws.1 and 2 and got marked Exs. X.1 to X.3.

11. R.W.1 was the Junior Executive-Legal in the office of the appellant- Insurance Company. He deposed that the case of the first respondent/claimant was stage managed and for the

purpose of getting compensation a false case was foisted against the auto rickshaw bearing No. AP 27 W 9394 in connivance of the second respondent. The auto rickshaw bearing No. AP 27 W 9394 was registered as a passenger carrying transport vehicle and to drive such vehicle, the driver must possess a valid driving license to drive auto rickshaw with transport endorsement, but the second respondent who was the driver cum owner of the said auto rickshaw was not holding transport endorsement as on the date of the accident. On the face of the policy, it is clearly mentioned that the vehicle is to be driven by a person holding a valid and effective driving licence. The second respondent who was the owner cum driver of the said auto rickshaw had knowingly and willfully committed breach of terms and conditions of the policy issued to the vehicle bearing No. AP 27 W 9394. The auto rickshaw bearing No. AP 27 X 0688 in which the claimant was traveling was instrumental in occurrence of the accident.

12. R.W.2 was working as Administrative Officer, RTO, Ongole. Having received the summons in the case to furnish driving licence particulars of second respondent-D.Kashim, Dornala, Prakasam District, he produced Ex. X.3. As per RTO office records, the second respondent was having only non-transport auto rickshaw driving licence and he did not possess transport licence to drive transport auto rickshaw as on the date of accident. As per M.V. Act and rules made thereunder, the

person should possess twenty years of age, one year experience in driving of non-transport vehicle and should have passed 8th class for obtaining transport vehicle driving licence. R.W.2 produced Ex. X.3, extract of driving licence issued to the second respondent-D.Kashim. As per the driving licence extract, his date of birth is 10.07.1983 and he had not filed any educational qualifications as required for obtaining a transport licence and therefore he was not authorized to drive transport auto rickshaw. During the cross-examination, he admitted that non-transport vehicle driving license was issued only after testing the skill of second respondent to drive auto rickshaw.

13. The evidence of R.W.1 which is corroborated the evidence of R.W.2 and supported by Ex.X.3 goes to suggest that the second respondent-D.kashim, owner cum driver of auto bearing No. AP 27 W 9394 possessed only non transport auto rickshaw driving licence and he was not issued transport vehicle driving licence to drive transport auto rickshaw.

14. The Tribunal having considered the evidence of R.Ws. 1 and 2 coupled with Exs. X.1 to X.3 came to the conclusion that the second respondent was holding non transport auto rickshaw licnece and he did not possess licence to drive transport auto rickshaw till the date of accident. It was held that

the second respondent did not possess educational qualification for obtaining transport vehicle driving licence. In view of the same, the Tribunal concluded that the second respondent was not holding any effective driving licence and thereby recorded that the appellant-Insurance Company is not liable to pay compensation and that the second respondent alone has to pay the compensation.

15. Further, the Tribunal having considered the evidence of P.W.2, the doctor who treated P.W.1, found that there was restriction of flection of the right knee joint and the total disability, which is permanent and partial was to the ~extent of 22% and in view of the same, he could not walk and carry on any hard work.

16. The Tribunal having considered that the first respondent/claimant was aged 30 years and was earning Rs.3,000/- per month working as a coolie, applied the multiplier '18', and assessed loss of earnings for 22% disability at Rs.1,42,560/-. Added to it, the Tribunal awarded Rs.20,000/- towards pain and suffering. In total, the Tribunal awarded compensation of Rs.1,62,560/-.

17. In the decision relied on by the learned Counsel for the respondents in MANUARA KHATUN Vs. RAJESH Kr.SING {

2017 (2) ALD 65 (SC)}, the Apex Court held that in MANAGER, NATIONAL INSURANCE COMPANY LIMITED Vs. SAJU P. PAUL AND ANOTHER {2013 (2) ALD 95 (SC)} it took note of entire previous case law on the subject mentioned therein and examined the question in the context of Section 147 of the MV Act. While allowing the appeal filed by the Insurance Company by reversing the judgment of the High Court, it was held on facts that since the victim was traveling in offending vehicle as 'gratuitous passenger', the Insurance Company cannot be held liable to suffer the liability arising out of accident on the strength of the insurance policy. However, the Apex Court keeping in view the benevolent object of the act and other relevant factors arising in the case, issued directions against the Insurance Company to pay the awarded sum to the claimants and then to recover the said sum from the insured in the same proceedings by applying the principle of 'pay and recover'. The Apex Court further held that the pendency of consideration of the aforesaid issue by a Larger Bench does not mean that the course that was followed in NATIONAL INSURANCE COMPANY LIMITED Vs. BALJIT KAUR AND OTHERS { 2004(1) ALD 98 (SC)} and NATIONAL INSURANCE COMPANY LIMITED Vs. CHALLA UPENDRA RAO AND OTHERS {(2004) 8 SCC 517} should not be followed, more so, in a peculiar facts situation of the case on hand (supra).

18. In the present case, the accident occurred on 21.04.2008. At the time of accident, the first respondent/claimant was 30 years and was a coolie earning Rs.3,000/- per month. He is now 39 years. Due to the injuries sustained in the accident, he has not been able to get compensation in view of the stay orders granted in the appeal. He cannot be compelleld to struggle further for recovery of the amount. The Insurance Company has already deposited 50% of the amount as per the order passed by this Court on 19.11.2010 in MACMA.No.4770 of 2010 and the said amount was kept in fixed deposit. Having regard to the peculiar facts and circumstances of the case, the first respondent/claimant, being a poor person and without any income having suffered injuries in the accident, the Tribunal rightly ordered pay and recovery.

19. For the foregoing discussion, there are no grounds, much less valid and substantial grounds, to establish that the Award of the Tribunal suffers from legal infirmities warranting interference of this Court.

20. The appeal fails and is accordingly dismissed confirming the Award and decree dated 22.06.2010 passed in OP.No. 820 of 2008 by the learned Chairman, Motor Vehicle

Accident Claims Tribunal-cum-V Additional District Judge (FTC), Guntur.

21. The appellant-Insurance Company is directed to deposit the balance compensation amount within one month from the date of receipt of a copy of this judgment with accrued interest thereon.

22. On such deposit, the first respondent-claimant is permitted to withdraw the amount.

23. Advocate fee is fixed at Rs.2000/-.

24. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED ---------NOVEMBER, 2017.
Msnr[x]