HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.1525 OF 2004
AND
CROSS OBJECTION (SR) No.7776 OF 2005

COMMON JUDGMENT:

The present appeal is preferred by M/s. New India Assurance Company Limited, who is respondent No.1 in M.V.O.P. No.932 of 2002, on the file of the Chairman, Motor Accidents Claims Tribunal - cum - Principal District Judge, Kurnool (for short 'Tribunal'), on the ground that though, there was no license to drive non-transport vehicle, driver of the jeep belonging to respondent No.3 herein driven it and, therefore, on account of that violation of terms and conditions of policy, no liability arises on the appellant to indemnify the owner and the Tribunal, somehow, overlooking the same, made the Insurance Company liable. Hence, the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act').

2. The aforesaid order was passed on 23.01.2004 in M.V.O.P. No.932 of 2002 awarding a sum of Rs.1,36,500/- as against the claim of Rs.2,00,000/- laid under Section 166 of the Act for the death of deceased - Telugu Naganna, father of respondent Nos.1 and 2 herein.

3. Respondent No.3 and appellant herein, who are owner and insurer of Jeep bearing registration No.AP-21/T.7964, are respondent Nos.1 and 2 in the aforesaid MVOP, respectively, while respondent Nos.1 and 2 are the petitioners.

4. For the sake of convenience, the parties herein are referred to as they were arrayed in the MVOP.

5. The fact-situation would reflect that on 15.07.2002 at about 10:00 a.m., deceased - Telugu Naganna left his sister's-in-law house at Atmakur village and proceeded to bus stand on foot on the extreme left side of the road to go back to his village - Gadwal, during which time, a Jeep bearing registration No.AP-21/T.7964 came from behind and hit him, due to which, he sustained grievous injuries. He was immediately shifted to Government Hospital, Atmakur and succumbed to injuries. Claiming that the deceased was 55 years old, earning Rs.100/- per day by doing Coolie work, contributing to his family, both the petitioners, who are major sons of the deceased, filed the claim petition.

6. Respondent No.1, though, entered appearance, did not contest the case.

7. Respondent No.2 - Insurer questioned the claim on the ground that the driver of the jeep was not holding valid driving license and it is a clear case of violation of terms and conditions of the policy, and thereby sought to dismiss the claim, besides contending that the amount sought for is excessive and exorbitant.

8. The Tribunal framed the following four issues.

1. Whether the accident that occurred on 15-7-2002 at about 10-00 A.M. in Atmakur Village, Mahaboobnagar District, which resulted in the death of Telugu Naganna s/o Ammaiah, was on account of the rash and negligent driving of the jeep AP-21/T.7964 by its driver?
2. Whether there was any violation of terms and conditions of the policy and Motor Vehicles Act?
3. Whether the petitioners are entitled for the claimed amount of compensation of Rs.2,00,000/-? If not, how much and against whom?
4. To what relief?

9. During inquiry, petitioner No.1 examined himself as PW.1 and one Telugu Satyamma was examined as PW.2, who is an eye-witness to the occurrence, and Exs.A-1 to A-5 were marked. Whereas, on behalf of respondent No.2, RWs.1 and 2 were examined, who are Senior Assistant in respondent No.2's local branch office and Junior Assistant in M.V.I. Office, Pebbair, and Exs.B-1 and B-2 were marked to prove that the driver of the jeep was not holding valid driving license to drive the vehicle.

10. The Tribunal on issue No.1 held that due to rash and negligent driving of the driver of the jeep, the accident has occurred.

11. On issue Nos.2 and 3, the Tribunal determined compensation taking the age of the deceased as 55 years, applied multiplier factor '11' finding place in schedule B to Section 163 of the Act and the contribution at Rs.12,000/- per annum having deducted

$1/3^{rd}$ from the amount of Rs.18,000/-, computing at Rs.50/- per day and arrived at Rs.1,32,000/- towards loss of dependency. Besides the same, the Tribunal also awarded a sum of Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate and, thus, a total sum of Rs.1,36,500/- was granted as compensation, apportioning equally to both the petitioners.

i) On liability, basing on the evidence of RW.2, who has answered in cross-examination that the person, who is having license to drive Light Motor Vehicle, is eligible to drive even a Jeep as the jeep is a Light Motor Vehicle, made respondent No.2 - Insurer also jointly liable to pay the compensation.

12. Heard Sri P. Harinath Gupta, learned counsel for the appellant - respondent No.2 - Insurer, and Sri A. Jayasankar Reddy, learned counsel for respondent Nos.1 and 2 & Cross-Objectors.

13. The main contention of the learned counsel for the appellant is that, the driver was driving L.M.V. Non-transport Vehicle without possessing valid driving license and, thus, there was clear violation of terms and conditions of policy, which the Tribunal overlooked and just basing on the answer given by RW.2, who has no comprehension of terms and conditions of the policy, the Tribunal mulcted liability on the Insurer, which ought not to have been done

and, therefore, sought to set aside the order and decree so far as appellant is concerned.

14. Per contra, the learned counsel for the petitioners - cross objectors supported the liability fixed by the Tribunal. It is also his submission that the petitioners are, in fact, entitled to the entire claim for the reason that a cooli even during the year 2002 was earning not less than Rs.100/- per day and the Tribunal ought to have taken Rs.100/- per day instead of Rs.50/- per day as the daily wage or earning.

15. Now, turning to the submission made by the learned counsel for the appellant, it is no doubt true, there is positive evidence to show that the driver of the jeep was not possessing LMV non-transport driving license, but it is not in dispute that he was holding LMV driving license. Though, it has come out in the evidence of RW.1 that jeep was passengers' vehicle and, thus, it was a commercial transport vehicle and the jeep driver ought to have held LMV transport driving license, but, in view of the law laid down by the Hon'ble Supreme Court in **S. Iyyapan v. United India Insurance Company Limited and another**[1], liability on the insurer was though not absolute, but the insurer can be directed to pay the amount and recover the same from the owner, as observed in paragraph Nos.16 to 19 thus:

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[1]. AIR 2013 (SC) 2262

"16. In the case of ***National Insurance Co. Ltd.*** *v.* ***Annappa Irappa Nesaria alias Nesaragi and Ors.*** [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:

> 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.

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.

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.

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."

However, the Hon'ble Supreme Court while setting aside the judgment of the High Court, held that the insurer is liable to pay compensation so awarded to the dependants of the victim of the fatal accident.

16. In the present case, the second witness examined on behalf of the Insurer – appellant from the Road Transport Authority, would assert that the driver was authorized to drive LMV Non-Transport Vehicle only as on the date of accident and the vehicle involved in the accident meant for carrying passengers comes under the category of 'Transport' vehicle. In his cross-examination, he answers to a question that the person, who is having license to drive LMV, is eligible to drive even a jeep since the jeep is a Light Motor Vehicle. Irrespective of the answers given by this witness, the fact that the driver was holding a valid subsisting driving license to drive LMV Non-transport vehicle at the relevant time. The law laid down by the Hon'ble Supreme Court in **S. Iyyapan**[1] would squarely apply. Therefore, to the extent of absolute joint and several liability fastened by the Tribunal, it requires modification to that of initial liability to

pay the compensation and recover the same from the owner. Accordingly, the finding recorded by the Tribunal to that extent is modified, directing the appellant - insurer, which is respondent No.2 in M.V.O.P. to initially pay the compensation amount to the petitioner and recover the same from the owner.

17. Turning to the cross-objections filed by the petitioners; in fact, the petitioners are not minors and their dependency is wholly doubtful, since they are majors as their ages are shown as 32 and 28 years respectively. Nothing is brought out in the evidence of PW.1 that either of them were disabled to pursue any occupation. Therefore, the compensation amount determined by the Tribunal cannot be faulted. While confirming the compensation awarded by the Tribunal, rejecting the cross-objections filed by the petitioners, order and decree are modified to the extent of directing the appellant - insurer, who is respondent No.2 in MVOP, to initially pay the amount and to recover the same from the owner of the vehicle, respondent No.1 in MVOP.

18. So far as the rate of interest is concerned, the Tribunal has granted at 9% per annum, but the same is on higher side and, accordingly, the same is reduced to 7.5% per annum from the date of petition till the date of payment in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[2].

[2]. 2013 ACJ 1403

19. In view of the aforesaid discussion, the present appeal is allowed in part to the extent indicated in the above, and cross-objections are dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in this appeal, stand disposed of.

A. SHANKAR NARAYANA, J

August 16, 2017.
Mgr