

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL Nos.2667, 2698

AND 2972 OF 2004

COMMON JUDGMENT:

The appellants - petitioners (claimants) approached this Court by preferring these appeals, under Section 173 of the Motor Vehicles Act, 1988, requesting to fasten liability on respondent No.3 - The Oriental Insurance Company Limited, which is insurer of the lorry bearing No.AP-02-T-2129 belonging to respondent No.2 and driven by respondent No.1, as the learned Chairman, Motor Accidents Claims Tribunal - cum - Additional District Judge, Vizianagaram, declined to fasten liability on the insurance company by the common order and decree dated 17.09.1999 in their respective O.Ps. i.e., O.P. Nos.493, 519 and 516 of 1997, based on the evidence of RW.1, a Junior Assistant in R.T.A. office, Anantapur. The said aspect was discussed in paragraph No.21, observing thus:

“... .. But, here in this case, the insurance company has examined R.W.1, by placing cogent evidence to disprove the contentions of R.1. Even according to R.1 himself he was not having any valid driving licence to drive any heavy goods vehicle, therefore, the insurance company cannot be saddled with any liability to pay compensation as there is clear violation of terms and conditions of the policy under Ex.B.2. The learned advocate for petitioners cited some other decisions of other Courts, but, when once the decision of the Supreme Court and A.P. High Court are taken note of, in which it was constantly held when the

Insurance Company proved that the driver of the vehicle was not having valid effective licence to drive a particular category of vehicle i.e., Heavy Goods Vehicle in this case it amounts to violation of terms and conditions of the policy and cannot be made liable to pay any compensation payable to the petitioner. Hence, in view of the legal position coupled with the oral testimony of R.W.1 and the documentary evidence under Ex.B.2 and Ex.X.4, I have no hesitation to hold that the driver R.1 is not having any driving licence to drive the Heavy Goods Vehicle and I, therefore answer the issue accordingly.”

2. In the grounds of appeal, which are common, since common order was passed disposing of the claim petitions, against which, the present three appeals have been preferred, the petitioners specifically pleaded that driver of the vehicle was holding valid driving licence, but, it was a duplicate licence issued by the competent authority on perusing the original licence and on ascertaining genuinity of his (respondent No.1) original licence and, therefore, the finding recorded by the learned Chairman that the driver of the vehicle was not holding valid driving licence and without valid driving licence, drove the vehicle, is misconceived as on account of lack of appreciation that resulted and, therefore, unsustainable.

3. Heard Sri Gudapati Venkateswara Rao, learned counsel for the appellants - claimants, and Sri Sridhara Agasthya Sarma, learned counsel for the insurance company, and perused the material on record.

4. The appeal was dismissed for default against respondent No.2, owner of the lorry that involved in the accident, on 05.11.2003. However, he has already suffered the decree passed by the Tribunal having remained *ex parte*. Further, dismissal of the appeal against respondent No.2 does not come in the way for determination of the controversy involved herein.

5. The evidence of RW.1, Junior Assistant in R.T.A's. office, Anantapur, in his chief-examination, speaks, thus:

“ I am working as Jr.Asst. in R.T.O's Office, Ananthapur. I produced the driving licence particulars of S. Venugopala Rao, i.e., R.1, in pursuance of the summons received. I am deposing on the basis of the record available in the office. As per the records, we did not issue any driving licence to R.1. The licence was issued to R.1 by R.t.O's Office, Dhavanagiri of Karnataka State. On production of original licence, our office will address a letter to Dhavanagiri office for confirmation and after receipt of reply from R.T.O's Office, Dhavanagiri, we will enter in our office records. There is a prescribed time for the entire transaction. There is nothing in our records about the following of the procedure. The original licence issued by Dhavanagiri office was valid from 8.1.82 to 7.1.83 and the licence was renewed by our office from 25.6.86 to 25.6.89. Thereafter from 11.4.92 to 10.4.93 Again it was renewed from 9.6.93 to 8.6.96. There was no entry in our records renewing the licence from 9.6.96 onwards. There are three entries to show issuance of duplicate licences. We used to mention the correct information, in the duplicates issued by us. In all the

three duplicates, we mentioned the correct particulars.
Ex.X.4 is the the relevant entry of R.T.O's office,
Ananthapurm."

In his cross-examination, he gives answers thus:

"We are not in the habit of issuing duplicate licence when the drivers were not having valid driving licences. When we issued a duplicate licence, we mentioned that the licence was valid from 11.7.96 to 10.7.99. When the licence was not renewed, we do not write about the fact of renewal, in the registers. Whenever the licences were issued, necessary entries will be made in the original licence registered i.e., O.D.28 H.S.Register. As per Ex.X.4 the licence of R.1 was renewed from 11.7.96 to 10.7.99."

In his cross-examination for petitioners, he gives an answer thus:

"R.1 was holding valid licence from 1983 to 10.7.99."

6. It is clear from the evidence of RW.1 that originally licence was taken from Dhavanagiri, Karnataka State, and renewal was taken for certain years after 1990 from Anantapur R.T.A. office. It is also clear from the evidence of RW.1 that he has brought the relevant register where the renewals recorded. His evidence, as extracted above, shows that licence was renewed from the office of the R.T.A., Anantapur from 25.06.1986 to 25.06.1989, thereafter, again from 11.04.1992 to 10.04.1993 and again renewed from 09.06.1993 to

08.06.1996. Though, he states in his chief-examination that there was no entry in the record renewing any licence from 09.06.1996 onwards, but, in his cross-examination, he states that when he issued a duplicate licence, it was mentioned that the licence was valid from 11.07.1996 to 10.07.1999 and when they renew the licence, they do not write about the fact of renewal in the registers. According to him, as per Ex.A-4, the licence of respondent No.1 was renewed from 11.07.1996 to 10.07.1999. The learned Chairman, somehow, overlooked the same. It has also come out in the cross-examination of RW.1 that Ex.A-4, which is the extract from the register i.e., O.D.28 H Register would show the periodical renewals for the period from 11.07.1996 to 10.07.1999. In the presence of such entries, it cannot be discarded, in the absence of cogent evidence that these entries are fabricated for the purpose of the present case at the instance of the petitioners, it is difficult to discard Ex.A-4 entries. This particular aspect was not dealt with by the learned Chairman, perhaps, by inadvertence and carried away by what was asserted by this witness in his chief-examination to the effect that there was no entry from 09.06.1996 onwards. This apart even in his cross-examination done by the learned counsel for the petitioners, he answered as extracted in the above, which shows that respondent No.1 was holding valid licence from 1983 to 10.07.1999. In the presence of such evidence on record, which stands un-controverted, certainly, the finding recorded on this aspect of the case suffers from legal infirmity and in such an event, certainly, that finding has to be over turned and accordingly set aside.

7. Except the challenge to the said finding in these appeals, no other ground is urged by the petitioners, in regard to award of quantum of compensation.

8. Therefore, as discussed above, it is held that respondent No.3, insurance company, is also jointly liable to pay the compensation to the petitioners awarded by the Tribunal in all these three appeals. The common order and the decrees are accordingly modified to that extent. In sum and substance, both respondent Nos.2 and 3 are jointly and severally liable to pay the compensation awarded by the Tribunal to the petitioners, in all these appeals.

9. Accordingly, all these Civil Miscellaneous Appeals are allowed fastening liability to pay compensation on respondent No.3, insurance company also. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in these appeals stand closed.

A. SHANKAR NARAYANA, J

September 14, 2017.

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