THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A Nos. 1399 and 1768 of 2013

COMMON JUDGMENT:

These two appeals are filed by the United India Insurance Company Limited, aggrieved by the Award dated 13.02.2013 passed in O.P.No.205 of 2007; and the Award dated 13.02.2013 passed in O.P.No.204 of 2007, by the Additional Chairman, Accidents Claims Tribunal-cum-XX Additional Chief Judge, City Civil Courts, Secunderabad. As both the appeals are arising out of the same accident, they are taken up for disposal by this common order.

2. Brief facts of the case are that on 08.03.2007 at about 8:00 PM, while Smt. P. Laxmi and her husband Shankar (hereinafter referred to as 'the deceased') were proceeding in an auto bearing No.AP 15P 4438 from Danthanpally village towards Toopran side, and when they reached Danthanpally village outskirts, on Toopran-Veldurthy road, one tractor-trailer bearing No.AP 24L 6702 and AP 23G 7843 driven by its driver in a rash and negligent manner, came at a high speed and dashed to the auto, due to which both the deceased received head injury and multiple fracture injuries all over their body and they succumbed to the injuries on the spot. A case was registered against the driver of the crime tractor-trailer by Shivampet Police Station in Crime No.25 of 2007 for the offence punishable under Section 304-A IPC.

Alleging that the accident occurred due to rash and negligent driving by the driver of crime tractor-trailer, the petitioners filed two Original Petitions i.e., O.P.No.205 of 2007 and O.P.No.204 of 2007.

O.P.No.205 of 2007 was filed by petitioner No.1/mother-in-law, and petitioners 2 and 3, who are minor daughters of the deceased P. Laxmi, claiming compensation of Rs.4,00,000/- on account of the death of the deceased.

O.P.No.204 of 2007 was filed by petitioner No.1/mother, petitioners 2 and 3, who are minor daughters of the deceased Shankar, claiming compensation of Rs.6,00,000/- on account of the death of the deceased.

On behalf of the petitioners, PWs.1 and 2 were examined, and documents Exs.A1 to A4 were marked. On behalf of the respondents, one Narahari was examined, and documents Exs.B1 to B16 were marked.

The Tribunal, on consideration of the oral and documentary evidence available on record, awarded compensation of Rs.4,00,000/- in O.P.No.205 of 2007, and Rs.5,02,600/- in O.P.No.204 of 2007, with proportionate costs and interest at 6% per annum from the date of petition till realization. The respondent No.1-owner of the tractor-trailer was held liable to pay the compensation amount and the respondent No.2-insurance company was exonerated, however, with a direction to deposit the compensation amount within 30 days from the date of the Award and granting liberty to recover the same from the respondent No.1 by due process of law.

Challenging the liability of pay and recovery fastened on it, the appellant-insurance company filed M.A.C.M.A.No.1399 of 2013 against the Award dated 13.02.2013 passed in O.P.No.205 of 2007; and M.A.C.M.A.No.1768 of 2013 against the Award dated 13.02.2013 passed in O.P.No.204 of 2007.

3. Heard the arguments of Sri A.V.K.S. Prasad, learned counsel for the appellant-insurance company, and Sri Akkam Eshwar, learned counsel for the respondents..

4. The point for consideration in this matter is whether the Award passed by the Tribunal fixing the liability on the insurance company to pay at the first instance and recover the same from the insurer is in accordance with law.

5. Learned counsel for the insurance company mainly contended that the driver of the crime vehicle does not have valid driving licence by the date of accident. The driving licence was obtained three months after the date of accident and, therefore, the insurance company is not liable to pay any compensation. It is argued that this is a case of no driving licence and therefore pay and recovery cannot be ordered in this case.

6. It is further contended by the insurance company that this is a second round of litigation wherein the High Court has allowed appeals preferred by the insurer and remanded the matter back to the trial Court by remand order dated 07.12.2011 to lead evidence in respect of driving licence of the driver of the crime vehicle.

7. It is further contended by the insurance company that the accused is the driver of the crime vehicle and the accused is no other than the son of the 1st respondent-owner of the crime vehicle and therefore the 1st respondent-owner had knowledge that his son has no driving licence by the date of the accident and inspite of that he entrusted his vehicle to his son, and therefore there is violation of terms and conditions of the insurance policy

and, therefore, the insurance company is not liable to pay compensation in this matter.

8. Learned counsel for the claimants placed reliance on the decision of the Supreme Court in **Iyyapan v. United India Insurance Co. Ltd.**[1] and contended that the order passed by the Tribunal directing the insurer to pay and recover is in accordance with law and therefore there is no illegality in the order passed by the Tribunal and therefore the appeals are liable to be dismissed.

9. The insurance company has examined four witnesses RWs.1 to 4 to prove that the driver of the crime vehicle tractor-trailer was not possessing valid driving licence as on the date of accident.

10. According to RW1, the driver of the crime vehicle was not having valid driving licence to drive the crime vehicle at the time of accident.

11. According to RW2, the driver- A. Shiva Kumar s/o Nagaiah, was not found guilty for the offence punishable under Section 304-A and 337 of IPC and accordingly he was acquitted in C.C.No.247 of 2011 on the file of the Special Magistrate of First Class, at Medak. RW2 further deposed that the petitioners failed to establish that due to rash and negligent driving by the driver of the tractor-trailer, the accident took place. The Tribunal, held that in view of evidence of PWs.1 and 2, coupled with Exs.A1 to A7, it is clearly established that due to rash and negligent driving by the driver of the crime vehicle, the accident occurred.

12. According to RW3, the 2nd respondent-insurance company filed the certified copy of the driving licence Ex.B2 dated

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21.03.2009 bearing No.DLFAP02385352007 issued by RTA, Medak District, at Sanga Reddy, belonging to A. Shiva Kumar s/o Nagaiah, Danthanpally village, Shivampet mandal, Medak District, and he took the driving licence for the first time on 15.06.2007 i.e., after three months from the date of accident and therefore it is clear that the accused driver is not having any driving licence at the time of accident. The Tribunal held that RW3 is working as Assistant Manager in United India Insurance Company Limited and he is not the competent person to depose whether the driver of the crime vehicle tractor-trailer had a driving licence or not.

13. RW4 is a Senior Assistant in RTA Department. Deputy Transport Commissioner has authorized him to give evidence. Ex.A18 is the authorization. RW4 brought an extract of driving licence of A. Shiva Kumar. Ex.B.19 is the copy of driving licence. Ex.B2 and Ex.B19 are one and the same. Ex.B19 shows that A. Shiva Kumar had valid driving licence from 15.06.2007. In the cross examination, he deposed that he did not verify with other RTA whether A. Shiva Kumar obtained driving licence from other RTA prior to Ex.B19, which shows that A. Shiva Kumar obtained driving licence on 15.06.2007 and the date of accident is on 08.03.2007. As per Ex.B2 and Ex.B19, A. Shiva Kumar had no driving licence on the date of accident and the respondent No.2 also issued legal notice Ex.B11, Ex.B13, and Ex.B15 to the owner of the crime vehicle Nagaiah and the driver, but inspite of it they did not produce the driving licence and MVI report also shows that the driver of the crime vehicle had no driving licence. So, placing reliance on the testimony of RWs.3 and 4, the Tribunal held that Ex.B19 clearly establishes that the driver of the crime vehicle had no driving licence by the date of accident; and held respondent No.2-insurance company not liable to pay

compensation. But however, the Tribunal ordered respondent No.2-insurance company to pay and recover the compensation. The same is under challenge in both these appeals.

14. It is contended by the learned counsel for the insurance company that when the insurance company is not liable to pay compensation, the insurer cannot even be made liable to pay at the first instance and recover the same, and the decision in **Iyyapan (1 supra)** is not applicable to the facts of the present case. He further contended that in **Iyyapan (1 supra)**, the driver of the crime vehicle had licence to drive a non-transport vehicle and he drove a transport vehicle and therefore the insurance company was directed to pay and recover, holding that mere absence of endorsement on the licence to drive a commercial vehicle does not contribute to the accident, and that rash and negligent act on the part of the driver is nothing to do with the absence of endorsement on the driving licence.

15. In **Iyyapan (1 supra)**, it was observed in paragraphs 18 and 19 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 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.*

16. Therefore, in **Iyyapan (1 supra),** it is clearly held that in case the driver of the crime vehicle is possessing a licence to drive one type of vehicle and drives another type of vehicle, though the liability of insurance company is exonerated, pay and recovery can be ordered.

17. The only point that is to be considered in these two appeals is whether there is any liability for the insurance company to pay the compensation to the claimants and recover the same from the owner of the crime vehicle.

18. This is a case of collision between an auto and a tractor-trailer. The deceased, who are husband and wife, were proceeding in an auto when the tractor-trailer driven by its driver in a rash and negligent manner, dashed the auto resulting in the death of both husband and wife. Two Original Petitions i.e., O.P.No.205 of 2007 and O.P.No.204 of 2007 were filed claiming compensation on account of death of the deceased. The Tribunal,

on consideration of oral and documentary evidence available on record, awarded compensation of Rs.4,00,000/- in O.P.No.205 of 2007; and Rs.5,02,600/- in O.P.No.204 of 2007. The Tribunal, while holding that the driver of the offending tractor-trailer had no driving licence as on the date of accident and, therefore, the owner is only liable to pay the compensation, simultaneously directed the insurance company to pay the compensation at the first instance and recover the same from the owner by due process of law.

19. RW4 is the Senior Assistant working in RTA Department and the Deputy Transport Commissioner authorized him vide Ex.A18-authorisation certificate to give evidence in this case before the Court. In his evidence, he produced a copy of the driving licence of offending driver A. Shiva Kumar which shows that he obtained driving licence on 15.06.2007. The accident occurred on 08.03.2007 at 8.00 PM, which is three months prior to the date of licence. Therefore, it is evident that the driver of the crime vehicle was not having driving licence as on the date of the accident.

20. Therefore, when the driver of the offending vehicle had no driving licence at the time of accident, it is a clear violation of terms and conditions of policy. The Tribunal, on consideration of the evidence, held that the driver of the offending vehicle had no driving licence as on the date of accident and, therefore, the owner of the offending vehicle is solely liable to pay the compensation, and exonerated the liability of insurance company. However, the Tribunal, while exonerating the insurance company, in the same vein, directed the insurance company to pay and

recover, apparently, relying on the decision of the Hon' ble Supreme Court in **Iyyapan (1 supra)**.

21. As discussed in the preceding paragraphs, in **Iyyapan (1 supra)**, the driver of the offending vehicle had licence to drive a non-transport vehicle and he drove a transport vehicle, without obtaining an endorsement on the licence to drive transport vehicle. When the insurance company challenged its liability on the ground of violation of terms of policy, the Apex Court held that mere absence of endorsement would not contribute to the accident and therefore, the insurance company was directed to pay at the first instance and then recover from the owner of the offending vehicle.

22. In the instant case, the driver A. Shiva Kumar, who drove the offending tractor-trailer, had no driving licence at all as on the date of accident. The driving licence copy of A. Shiva Kumar, which was produced by RW4 who is an official of RTA Department, would go to show the date of issuance of driving licence as 15.06.2007 which means that A. Shiva Kumar had no driving licence as on 08.03.2007, the date on which the accident occurred. Therefore, it is a violation of terms and conditions of policy and hence the insurance company is not liable to pay compensation. Therefore, when the insurance company is not liable to pay compensation, it cannot be held liable to pay and recover.

23. In view of the foregoing discussion, the order passed by the Tribunal, insofar as directing the insurance company to pay and recover, is liable to be set aside.

24. **IN THE RESULT**, the appeals are allowed, setting aside the order passed by the Tribunal dated 13.02.2013 in O.P.No.205 of 2007; and the order dated 13.02.2013 in O.P.No.204 of 2007 insofar as the direction of pay and recover passed against the insurance company is concerned. Rest of the order passed by the Tribunal in both the Original Petitions shall be intact. If any amount has already been deposited by the insurance company and the same has been withdrawn by the claimants, the insurance company is at liberty to recover the same from the owner of the crime vehicle. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

26th October, 2017
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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A Nos. 1399 and 1768 of 2013

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