

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* * * *

MACMA.No. 1063 of 2010

Between:

ICICI Lombard General Insurance Company Ltd.,

....Appellant

And

Botta Dhruva Teja, and 2 others

....Respondents

JUDGMENT PRONOUNCED ON: 16.06.2017

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

GUDISEVA SHYAM PRASAD, J

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 1063 of 2010JUDGMENT:

This appeal is filed by ICICI Lombard General Insurance Company Limited, under Section 173 of the Motor Vehicles Act, 1988, aggrieved by the award dated 04.12.2009 passed by the Motor Accidents Claims Tribunal (District Court), Vizianagaram, in M.O.P. No.33 of 2007.

2. For the sake of convenience, the parties will be referred to as they were arrayed before the Tribunal.

3. Brief facts of the case are that on 02.06.2006, at about 09:00 hrs, when Botta Dhruva Teja, a minor boy of age 11 years, was coming from Nellimarla to Vizianagaram on cycle on left side of the road by following traffic rules, and reached near Ayyappaswamy Temple, Nellimarla Road, an auto bearing No. AP 35T 9983, proceeding from Vizianagaram to Nellimarla, driven by its driver in a rash and negligent manner, at a high speed, dashed against the petitioner. As a result of which, the boy fell down and received simple and grievous injuries all over his body. As the boy was minor by the date of accident, his father filed the claim petition on his behalf against the driver, owner and the insurer of the crime vehicle, claiming compensation of Rs.3,00,000/- on account of the injuries suffered by his son in the accident.

4. Respondent No.1-Driver, and respondent No.2-Owner of the crime vehicle remained ex parte.

5. Respondent No.3-Insurer filed counter denying the material allegations in the claim petition. It is *inter alia* contended that the respondent No.2-owner has leased out the auto to the respondent No.1, which amounts to breach of contract and also violation of terms and

conditions of policy. It was also contended that the insurer is not liable to pay compensation unless it is proved that the crime vehicle was driven by a person possessing a valid licence and also in possession of necessary documents pertaining to the crime vehicle at the material time of accident.

6. Based on the above pleadings, the Tribunal framed the following issues:

- (i) *Whether the pleaded accident occurred resulting in injuries to the petitioner, due to rash and negligent driving of the auto bearing No.AP 35T 9983 by its driver-1st respondent?*
- (ii) *Whether the petitioner is entitled to any compensation, and if so, for what quantum entitled to and what is the liability of the respondents?*
- (iii) *To what relief?*

7. On behalf of the petitioner, PWs.1 to 4 were examined, and documents Exs.A1 to A10 were marked. On behalf of the 3rd respondent-Insurance company, RWs.1 and 2 were examined and Exs.B1-copy of insurance policy, and Ex.B2-driving licence, were marked.

8. The Tribunal, on consideration of the oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the auto bearing No.AP 35T 9983 and awarded compensation of Rs.1,50,000/- with proportionate costs and interest at 6% per annum from the date of petition till realisation, making respondent Nos.1 to 3 jointly and severally liable to pay the compensation, and directed the respondent No.3-Insurer to deposit the entire compensation within one month from the date of the award.

9. The appellant-Insurance company challenged the award on the following grounds:

- (i) That the owner of the crime vehicle has violated the terms and conditions of insurance policy, as he has leased out the auto to one Tadi Balaji. It is a breach of contract.
- (ii) There is violation of terms and conditions of insurance policy as the driver of the offending vehicle was not having a valid driving licence by the date of accident, as such, the liability of the insurance company is exonerated. The driver of the crime vehicle has LMV licence with non-transport endorsement, and therefore he is not authorised to drive LMV transport vehicle. This fact was within the knowledge of the owner of the crime vehicle and, therefore, the insurer is not vicariously liable to indemnify the compensation for the owner of the crime vehicle.
- (iii) The insurance policy was issued for goods carrying vehicle with open body. The driver must have a badge for a goods vehicle, otherwise it is a violation of terms and conditions of the policy in respect of driving licence.

10. Heard Sri Ravi Shankar Jandhyala, learned counsel for the appellant-insurance company, and Sri Venkateswara Rao Gudapati, learned counsel for the respondent-claimant.

11. Learned counsel for the appellant-insurance company contended that the insurance policy was meant for covering goods carrying vehicle, but the crime vehicle was used as a passenger auto. It is further contended that the 1st respondent-driver has licence to drive LMV non-transport vehicle, but he drove LMV transport vehicle and, therefore, there is violation of terms and conditions of the policy.

12. RW1 was an insurance official. He stated that the insurance company issued policy in the name of the owner of the crime vehicle, and the policy was valid from 18.01.2006 to 17.01.2007. The 1st respondent-driver is the son of the 2nd respondent-owner of the crime vehicle. He

further stated that the 2nd respondent appointed the 1st respondent as driver at the time of accident and the 1st respondent has no valid and effective driving licence to drive the crime vehicle.

13. RW2 is an official of Road Transport Authority. He stated that the 1st respondent was having driving licence which was valid from 21.04.2005 to 20.4.2025, and according to his licence, he has to drive light motor vehicle non-transport, and he is not authorised to drive light motor vehicle transport vehicle.

14. This is an appeal by the insurer. The liability is denied on the ground of violation of the conditions of policy. It is argued that the insurance policy was meant for goods carrying vehicle, whereas the offending vehicle was used as a passenger auto. According to the insurer, there is violation of terms and conditions of the policy, and the driver of the crime vehicle had licence to drive LMV non-transport, but he drove LMV transport and, therefore, the insurer is not liable to pay compensation as the policy conditions are violated, and therefore, this is a fit case for ordering pay and recovery.

15. The Tribunal, on consideration of the evidence, has given a clear finding to the effect that there is no evidence on record to show that the 2nd respondent-owner handed over the auto to the 1st respondent-driver as they are nearest relatives. There was no evidence to show such entrustment of the offending vehicle by the 2nd respondent to the 1st respondent. As a matter of fact, the 1st and 2nd respondents have remained ex parte before the Tribunal. The contesting respondent was only the 3rd respondent. The 3rd respondent is the appellant herein who has placed reliance on the evidence of RW1 and RW2 to prove the violation of terms and conditions of the policy.

16. As per the evidence of RW1, Ex.B1-insurance policy and Ex.B2-driving licence, the vehicle involved in the accident is a light motor vehicle non-transport. According to the Tribunal, it is not a clear violation of terms and conditions of the insurance policy.

17. On consideration of evidence and the arguments of both sides and in the light of the judgment in the case of *S. Iyyapan v. United India Insurance Co. Ltd*¹, it can be safely concluded that this is a case where the insurer cannot deny its liability. It is appropriate to refer to paragraphs 18 and 19 of the *Iyyapan* (1 supra) which are 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

¹ (2013) 7 SCC 62

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.

18. This is a case of death of minor boy in an accident. The driver was holding a valid driving licence to drive a light motor vehicle non-transport. There is no dispute that the motor vehicle involved in the accident was an auto. The insurer cannot disown its liability on the ground that the driver of the crime vehicle was having licence to drive a light motor vehicle but he drove a commercial vehicle. As a matter of fact, in the present case, the deceased minor boy is a third party to the insurance policy. It is for the insurer to proceed against the insured for recovery of amount if there is violation of conditions of insurance policy.

19. In view of the foregoing reasons, the contention of the insurer that this is a case where pay and recovery can be ordered, cannot be accepted, as the liability of the insurer is established in view of the ratio laid down in the case of Iyyapan (1 supra). Therefore, the appeal has no merit and is liable to be dismissed.

20. In the result, the appeal is dismissed, and the order dated 04.12.2009 passed by the Tribunal in M.O.P. No.33 of 2007 is confirmed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

16th June, 2017

KSM

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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