HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 823 of 2010

JUDGMENT:

This appeal is arising out of the order dated 18.02.2010 passed in MVOP No.68 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge,Kurnool at Adoni.

2. The appellants are the petitioners who filed MVOPNo.68 of 2007 before the Tribunal under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.2 lakhs against the respondents 1 and 2, the owner and insurer of the crime vehicle on account of death of deceased in the motor vehicle accident. The Tribunal on behalf of the petitioners examined PWs.1 and 2 and marked Exs.A-1 to A-9 and on behalf of the respondents, examined RWs.1 and 2 and marked documents Exs.B-1 to B-3 and Ex.X-1 letter of transport department and passed an award holding the first respondent-owner liable to pay compensation of Rs.2 lakhs with interest at 7.5% per annum and dismissed the claim against the second respondent-insurer.

3. Aggrieved by the orders passed by the Tribunal exonerating the liability of the insurance company, this appeal has been preferred by the claimants to fasten the liability against the insurance company.

4. Heard the arguments of the learned counsel for the appellants and the learned counsel for the respondents.

5. The main contention in this appeal by the appellants is that the driver of the crime vehicle was having a licence to drive light motor vehicle, non transport and whereas, he had driven Tata Sumo which is a

transport vehicle and therefore, the Tribunal has exonerated the liability of the insurer.

6. The learned counsel for the appellants placed reliance on the decision reported in S.Iyyapan vs M/S United India Insurance[1]. The learned counsel for the appellants submitted that in view of the decision in the case of Iyyapan, if the driver of the crime vehicle is possessing a licence to drive one type of vehicle and drives another type of vehicle, the liability of the insurer cannot be exonerated. Therefore, sought for pay and recovery.

7. The learned counsel for the second respondent-insurance company submitted that in the light of the decision rendered in the case of NATIONAL INSURANCE CO.LTD. v. SWARAN SINGH & OTHERS[2], there is no liability for the insurer and therefore, the Tribunal correctly held that the insurer is not liable to pay any compensation and exonerated the liability of the insurer.

8. In view of the judgments rendered subsequent to Swaran Singh case, in the case of Iyyapan, the insurer is liable to pay compensation and recover the same from the owner later.

9. At the outset, the dispute involved in this appeal is only with regard to validity of driving license. The contention of the learned counsel for the appellants is that the driver of the crime vehicle is possessing a valid driving licence to drive light motor vehicle, non transport, whereas he had driven a transport vehicle which is Tata Sumo. In view of the judgment in Iyyapan case, the insurer is liable to pay compensation at the first instance and recover the same from the owner. In para 19 of Iyyappan case, it is observed as under:

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[1] (2013) 7 SCC 62
[2] (2004) 3 SCC 297

> "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.

10. In view of the ratio laid down in the Iyyapan case, it is obvious that if the driver was holding a valid driving licence to drive light motor vehicle and had driven a commercial vehicle, the liability of the insurance company cannot be exonerated.

11. In view of the facts and circumstances of this case and also basing on the judgments cited supra, the pay and recovery is ordered in this case. The insurer is directed to pay compensation at the first instance and recover the same from the owner.

12. In the result, the appeal is partly allowed. The finding of the Tribunal with regard to exonerating the liability of the insurance company is set aside. The insurance company is directed to pay the compensation in the first instance to the claimant and recover the same from the owner. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

G. SHYAM PRASAD, J

Date:16.03.2017.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD

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