HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 1698 of 2010

JUDGMENT:

1. The appellant/Insurance Company aggrieved by the Award and Decree dated 26.02.2010 passed in O.P.No.277 of 2008 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-IV Additional District Judge (FTC), Medak, at Siddipet, preferred this appeal mainly on the ground that the driver of the offending vehicle did not possess valid and effective driving licence issued by the competent authority as stipulated under Sections 3, 7 and as defined under Section 2(10) of the M.V. Act and as such, the Award of the Tribunal making the Insurance Company/appellant jointly and severally liable to pay the compensation along with the owner of the offending vehicle is illegal and void.

2. Though sufficient time and opportunity is granted, none appears for the respondents to advance the arguments. Keeping in view that Motor Vehicles Act is a beneficial legislation and since the appeal is pending from the year 2010, the judgment is being pronounced on merits based on the material available on record and on hearing the learned Counsel for the appellant/Insurance Company.

3. The first respondent herein is the claimant in OP.No.277 of 2008, who claimed compensation of Rs.2,00,000/-

with interest at 18% per annum. As against the said claim, the Tribunal awarded compensation of Rs.1,23,500/- with interest at 7.5% per annum and directed the appellant/Insurance Company and second respondent jointly and severally to pay the said compensation.

4. The case of the first respondent/claimant in brief is as follows: The first respondent/claimant was a toddy topper by profession. On 6.2.2008 while he was coming from Ramalingeshwara Temple to Pothareddypet on his Suzuki Motor Cycle and when he reached Bhoompally Kaman, one auto bearing No. AP 24 V 2941 having driven with high speed and in rash and negligent manner, came in opposite direction and dashed the motor cycle, as a result of which, the claimant sustained severe injuries to his right leg and all over the body. Immediately after the accident, he was shifted to Siddarth Hospital, Siddipet, wherein he took treatment for fifteen days as in-patient, incurred expenditure of Rs.75,000/-, underwent surgery and required major operation for removal of the implants. On account of the injuries sustained in the accident, he is unable to carry on toddy work. Before the accident, he used to earn Rs.4,000/- per month.

5. Now the point that arises for consideration is whether the finding of the Tribunal that the driver of the offending

auto possessed valid and effective driving license and competent to drive the auto is legal and valid.

6. The sum and substance of the entire grounds pleaded by the appellant/Insurance Company is that the driver of the offending vehicle did not possess valid and effective driving license as on the date of the accident as contemplated under the M.V. Act and the same was only a temporary license.

7. The first respondent/claimant himself was examined as P.W.1. His clinching evidence was that the driver of the offending auto drove the vehicle/auto with high speed and in rash and negligent manner and caused the accident, in which, the he (first respondent/claiman) sustained grievous injuries and under went surgery.

8. After thorough investigation, the Investigating Officer filed charge sheet-Ex.A.5 against the driver of the offending auto bearing No. AP 24 V 2941 for the offences punishable under Section 338 IPC. Against the said evidence of P.W.1 and findings of the Investigating Officer in Ex. A.5–Charge sheet, there is rebuttal evidence of R.W.1 who spoke that the driver did not possess valid and effective driving licence at the time of accident and that the driver of the offending auto was not qualified for holding such driving license and that he had not

satisfied the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.

9. Admittedly the auto bearing No. AP 24 V 2941 was a passenger carrying commercial vehicle. It was also the evidence of R.W.1 that the second respondent having knowledge that the driver of the auto had no valid and effective licence to drive the offending auto as on the date of accident, thereby committed breach of terms and conditions of policy-Ex.B.1.

10. It is pertinent to note that the appellant/Insurance Company issued Ex. B.3–statutory notice dated 17.07.2008 calling upon the second respondent to furnish licence of the driver, vehicle insurance copy and also copy of its RC. Though the second respondent received such notice under acknowledgment- Ex. B.4, did not furnish those particulars as contemplated by the appellant under Ex. B.3.

11. Ex. B.2 is the extract of driving licence issued to Syed Shareef-Driver of the offending auto No. AP 24V 2941 at the time of accident, according to which, the driver possess only non transport driving licence issued on 08.12.2005 and it was valid till 07.12.2025. Ex.B.2 further discloses that the driver was authorized to drive auto rikshaw non-transport vehicle and non-transport motor vehicle with gear.

12. During cross-examination, R.W.1 specifically admitted that the driver of the offending vehicle was issued non-transport vehicle driving licnece and he has no technical knowledge about the driving licence and mechanism of the vehicles as he was only B.Com and B.L. With regard to the question as to difference between the driving licence for transport vehicles and non-transport vehicles, he replied that initially the transport authority would issue licence to drive non-transport vehicles and later, on application, transport vehicle driving licence would be issued.

13. The Tribunal having considered the above facts, came to the conclusion that the accident took on 6.2.2008 and the LMV non-transport and Auto rikshaw non-transport vehicle driving licence was given to the driver-Syed Shareef on 8.12.2005, by which date, the said driver had experience of two years to drive LMV non-transport and auto rikshaw non-transport vehicles.

14. In the case of NATIONAL INSURANCE COMPANY LIMITED Vs. ANNAPPA IRAPPA NESARIA AND OTHER {AIR 2008 SC 1418}, the Apex Court held that Clause (e) of the Rule 14 provides that transport vehicle has been substituted by G.S.R. 221(E) with effect from 28.3.2001. Before the amendment in 2001, the entries as to medium goods vehicle and heavy

goods vehicle existed then have been substituted by transport vehicle, which includes light motor vehicle. As defined in Section 2(20) regarding Light Motor Vehicle, as then existed, it includes a light transport vehicle. Form 6 provides for the manner in which the licence is to be granted. After the amendment to the M.V. Act in 2001, the medium goods vehicle and heavy goods vehicle have been substituted by transport vehicle, which includes Light Motor Vehicles. The driver who had licence to drive light motor vehicle was authorized to drive light goods vehicle also. Section 2(21) defines "light motor vehicle" and Section 2(23) defines "medium goods vehicle" as per which Light motor vehicle means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms. The offending auto is laded less than 7500 Kgs.

15. In the subsequent decision, the Apex Court in the case of MUKUND DEWANGAN Vs. ORIENTAL INSURANCE COMPANY LIMITED (2017 ACJ 2011) also held that the transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7,500 Kgs or a motor car or tractor or road-roller, the unladen weight of which does not exceed 7,500 Kgs would be light motor vehicle. Thus, the newly incorporated expression ‘transport vehicle’ in Section 10(2)(e) would include only the vehicles of the category as defined in Section 2(16)-heavy goods vehicle, Section 2(17)–heavy passenger motor

vehicle, Section 2(23)–medium goods vehicle and Section 2(24)-medium passenger motor vehicle, and would not include the ‘light motor vehicle’ which means transport vehicle also of the weight specified in section 2(21) of the Act. The driver holding licence to drive ‘light motor vehicle’ can drive transport vehicle of that class without any endorsement to that effect.

16. For the foregoing discussion, I find that the offending auto AP 24V 2941 is a light motor vehicle and the driver who possessed Light Motor vehicle driving licence and non-transport vehicle driving licence and having no prohibition for obtaining driving licence for transport vehicle, was competent to drive the auto. The driver having licene to drive light motor vehicle and non-transport vehicle with gear is competent to drive the passenger auto.

17. Following the judgment of the Apex Court referred supra and taking into consideration the evidence adduced by both the parties, this Court is of the opinion that the finding of the Tribunal that the driver of the offending auto was having valid and effective driving license as on the date of the accident and the consequential direction to the appellant/Insurance Company and second respondent to pay the compensation jointly and severally, is legal, valid and do not suffer from any legal infirmities.

18. In the result, the MACMA is dismissed with costs, confirming the Award and Decree dated 26.02.2010 passed in O.P.No. 277 of 2008 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-IV Additional District Judge (FTC), Medak, at Siddipet.

19. Advocate fee is fixed at Rs.2,000/-.

20. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 15th November, 2017.
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