THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.2685 of 2013

JUDGMENT:

This appeal is arising out of the order dated 05.01.2012 passed in O.P.No.235 of 2009 on the file of the Motor Vehicle Accidents Claims Tribunal-cum-I Additional District Judge, Karimnagar.

2. The appellant is the 2nd respondent-Insurance Company. Respondent No.1 is the petitioner, who filed the said O.P. under Section 166(1)(A) of Motor Vehicles Act, 1988, claiming compensation of Rs.2,50,000/- on account of the injuries sustained by him in the motor vehicle accident.

3. For the sake of convenience, the parties are referred to as they arrayed before the Tribunal.

4. The brief facts of the case are that, on 27.05.2008, the petitioner went along with one Thallapalli Ramulu to Jammikunta in a three wheeler goods vehicle bearing No.AP-15-X-9284 to take his bull to Jammikunta cattle market. The petitioner stood in the trolley along with the bull to control the bull. The driver of the three wheeler goods vehicle drove the vehicle at high speed in a rash and negligent manner and could not control the same and it turned turtle. The petitioner sustained grievous injuries in the accident and received fracture to his femur. He also sustained injuries over his face and his arms. He was shifted to Surya Nursing Home and was treated as an inpatient for 17 days and he underwent surgery for his right thigh and hip and a rod was placed. The doctor estimated the cost of Rs.50,000/- for removal of the said rod. A case was registered in Crime No.86 of 2008 for the offence punishable

under Section 338 of IPC. The petitioner was an agriculturist and was earning Rs.5,000/- per month prior to the accident. Due to the fractures received by him in the accident, he is unable to attend to his work for two years. The 1st respondent is the driver-cum-owner of the offending auto and it was insured with the 2nd respondent-Insurance Company

5. 1st respondent filed his counter denying the allegations made in the petition and the manner in which the accident had occurred and he had denied the rash and negligent act on the part of the driver of the crime vehicle. The petitioner was put to strict proof of the age, income and nature of the injuries sustained by him in the accident. It is further stated that the vehicle was duly insured with the 2nd respondent. The policy was in force by the date of accident. It is further stated that the claim of the petitioner was excessive and exorbitant. The 2nd respondent-Insurer filed counter denying the allegations made in the petition and the petitioner was put to strict proof of the age, occupation and income of the petitioner, manner of accident, nature of injuries suffered by the petitioner and the nature of treatment undergone by him. It is further stated that the bull caused disturbance as the petitioner sat beside the bull in the trolley, who is not supposed to travel in the trolley, which is meant for carrying goods. The Tribunal, on consideration of oral and documentary evidence, awarded compensation of Rs.80,000/-.

6. Heard both sides and perused the material on record.

7. Learned counsel for the appellant-Insurer submits that the vehicle involved in the accident is a transport vehicle and the driver of the vehicle was having licence to drive non-transport vehicle, which is light motor

vehicle. Therefore, there is breach of conditions of policy. As such, the insurer is not liable to pay any compensation.

8. Learned counsel for the 1st respondent placed reliance on the decision of the Apex Court in S.Iyyapan v. United India Insurance Co. Ltd.[1], and submitted that if the driver is holding a valid driving licence to drive the light motor vehicle and if there is no endorsement in the driving licence with regard to the permission to drive the commercial vehicle, there is no violation of terms and conditions of policy and if there is any violation, pay and recovery can be ordered.

Para 18 of S.Iyyapan's case, held as under:

> "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."

9. Learned counsel for the 1st respondent submitted that the crime vehicle involved in the accident is a goods carrying vehicle and it carried bull at the time of accident. The driver of the crime vehicle was possessing driving licence. The facts of the above case are similar to the facts of the case on hand and therefore, the insurer cannot escape its liability.

10. It is obvious that the accident occurred while the 1st respondent was travelling in auto along with his bull. The auto is a goods vehicle, it is not meant for transport. Though it is a goods vehicle, the claimant was

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[1] (2013) 7 SCC 62

travelling in an auto along with his bull, as owner of goods. It is obvious that the Tribunal found that there is no violation of terms and conditions of the insurance policy and held that the 2nd respondent is liable for payment of compensation.

11. In the light of the decision reported in *Iyyapan's* case and in view of the facts and circumstances of the case, I do not see any valid grounds to interfere with the findings of the Tribunal in respect of the liability of the insurer. Therefore, the appeal is liable to be dismissed.

12. In the result, the appeal is dismissed and the order passed by the Tribunal is confirmed. No costs. Pending miscellaneous petitions, if any, shall stand closed.

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JUSTICE GUDISEVA SHYAM PRASAD

23rd March, 2017
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