THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 1103 of 2010

JUDGMENT:

This appeal is arising out of the Order and Decree dated 05.12.2008 passed in M.O.P.No.658 of 2007 on the file of Motor Accidents Claims Tribunal-cum-VI Additional District Judge, at Visakhapatnam.

2. Brief facts of the case are that on 19.12.2006, at about 10:30 AM, the father of petitioner No.1-Vanapalli Kondayya, while crossing the road at Dabagardens, Visakhapatnam, near R.K. Family Shop, for selling flowers in the streets, a TVS Moped bearing registration No.AP-31Q-1931, coming from RTC Complex side, rode by its rider in a rash and negligent manner, dashed the deceased. As a result, the deceased fell down and received grievous injuries on his left leg and on his head. He was shifted to K.G.H. Visakhapatnam, for treatment. On 24.12.2006, he succumbed to injuries while undergoing treatment. Alleging that the accident occurred due to rash and negligent riding by the rider of the TVS Moped, the claimants filed petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.1,50,000/- against respondents 1 and 2, the owner and the insurer of the offending vehicle.

3. Heard the arguments of Sri Kota Subba Rao, learned counsel for the appellant-Insurance Company, and Sri Chandrarao Veeramalla, learned counsel for 5th respondent-owner of offending vehicle.

4. Respondent No.1-owner and respondent No.2-insurer filed their respective counters and contested the case. On behalf of the claimants, PWs.1 to 3 were examined and Exs.A1 to A6 were marked. On behalf of the

2nd respondent-ICICI Lombard General Insurance Company Limited, RW1 was examined, and Exs.B1 to B7 were marked.

5. The Tribunal, on consideration of oral and documentary evidence adduced, awarded compensation of Rs.85,000/- against respondents 1 and 2. Aggrieved thereby, the 2nd respondent-Insurance Company filed this appeal.

6. Learned counsel for the appellant submitted that there is violation of terms and conditions of the insurance policy as the driver of the crime vehicle was not having valid driving licence as on the date of accident. Placing reliance on Exs.B2 to B7, it is submitted that steps have been taken for issuing notices to the owner of the offending vehicle and also to the rider of the offending vehicle for producing the driving licence, but they have not produced the driving licence. He further submitted that the Tribunal, without considering the above aspects, fastened the liability on the insurance company.

7. It is therefore submitted that the insurer has taken all steps for production of driving licence by the owner and rider of the motorcycle. Ex.B2 is the letter addressed to the owner of the crime vehicle, Ex.B3 is the postal receipt for dispatch of Ex.B2, and Ex.B4 is the legal notice issued to the owner of the crime vehicle and also the rider of the vehicle, and Ex.B5 is postal receipts two in number for dispatch of Ex.B4, and Ex.B6 is the acknowledgement of the owner of the crime vehicle, and Ex.B7 is the acknowledgment of the rider of the crime vehicle. In spite of all the efforts made by the insurance company, the driving licence has not been produced by either the rider of the motorcycle or owner of the vehicle. Therefore, the insurer has discharged his burden by taking all possible steps for production of the driving licence by the owner and the rider of the crime vehicle. It is

further submitted that as per the charge-sheet the driver was not possessing valid driving licence, therefore the police have registered a case under Section 181 of the Motor Vehicles Act. Section 181 of the Motor Vehicles Act, reads as under:

> *"181. Driving vehicles in contravention of section 3 or section 4.— Whoever drives a motor vehicle in contravention of section 3 or section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."*

8. As a matter of fact, the Therefore, in view of the fact that the insurer has taken all steps for production of the driving licence, but he could not succeed in his efforts as no driving licence has been produced either by the owner or by the rider of the motorcycle. It is obvious that the owner has contested the matter before the Tribunal and in this case, he has not adduced any evidence to prove that the driver of crime vehicle was having valid driving licence at the time of accident.

9. Learned counsel for 5th respondent-owner of the offending vehicle, placed reliance on the judgment of this Court in D. Krishnaveni and others v. Mohd. Sikander and another[1] and submitted that the facts of the case on hand and the facts of the decision cited above are similar. In both these cases, the driver was charge-sheeted for the offence under Section 181 of Motor Vehicles Act and basing on that the Tribunal came to the conclusion that the driver had no valid driving licence at the time of accident and held that both the owner and insurer liable for payment of compensation. It is further contended that in the present case also, the accused was charge-sheeted for not possessing valid driving licence. It is sufficient for the Court to come to a conclusion that the driver was not having valid driving licence at

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[1] 2010 (1) ALD 194

the time of accident and, the said proposition of law was laid down in D. Krishnaveni (1 supra).

10. Per contra, learned counsel for the appellant, placed reliance on the judgment of the Hon' ble Supreme Court in United India Insurance Co. Ltd. v. Rakesh Kumar Arora and others[2] and submitted that the facts in the case of D. Krishnaveni (1 supra) are totally different from the facts of the present case. The learned counsel submitted that the Apex Court had clearly held in paragraphs 17 and 18 of Rakesh Kumar Arora (2 supra) as under:

> ***"17. The learned single Judge as also the Division Bench of the High Court did not put unto themselves a correct question of law. They proceeded on a wrong premise that it was for the Insurance Company to prove breach of conditions of the contract of insurance.***
>
> ***18. The High Court did not advert to itself the provisions of Sections 4 and 5 of the Motor Vehicles Act and thus misdirected itself in law."***

11. Learned counsel for the appellant, placing reliance on the above decision in Rakesh Kumar Arora (2 supra), submitted that in the instant case, the burden is not on the insurance company to prove that the driver of crime vehicle is not having valid driving licence, since it is already stated in the charge-sheet that a case for the offence punishable under Section 181 of the Motor Vehicles Act has been registered against the driver of the crime vehicle for not possessing valid driving licence.

12. In National Insurance Company Ltd., v. Swaran Singh[3], the Hon'ble Supreme Court ordered pay and recovery as the driver of

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[2] 2009 (3) ALD 136 (SC)
[3] 2004 ACJ 1

the crime vehicle was not holding valid and effective licence for driving the crime vehicle. In New India Assurance Co. Ltd., v. Roshanben Rahemansha Fakir and another[4] also, the Hon'ble Supreme Court ordered pay and recovery as the driver of the crime vehicle was not holding valid and effective driving licence to drive the goods vehicle.

13. Even in the recent judgment of the apex Court in the case of Iyyapan v. United India Insurance Co. Ltd.[5], it was clearly held that the driver holding a valid driving licence to drive light motor vehicle drives a commercial vehicle, he is deemed to have valid driving licence. It was observed in paragraphs 18 and 19 of the Iyyapan (4 supra) judgment, 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.***
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> ***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***

[4] 2008 ACJ 2161
[5] (2013) 7 SCC 62

> ***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.***

14. In view of the facts and circumstances of the case, keeping in view the ratio in Swaran Singh (3 supra), and also Iyyapan (4 supra) the ends of justice would be met if the insurer is directed to pay the compensation, at the first instance, and recover the same from the owner of the crime vehicle as per the procedure contemplated in National Insurance Co. Ltd. v. Chella Bharathamma and others[6].

15. In the result, the appeal is partly allowed, modifying the award passed by the Tribunal, by setting aside its finding fixing the liability to insurer jointly and severally, and 2nd respondent-Insurer is directed to pay the compensation awarded by the Tribunal, at the first instance, and recover the same from the 1st respondent-owner of the offending vehicle as per the procedure in Chella Bharathamma (4 supra). No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

20th March, 2017

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[6] AIR 2004 SC 4882

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