THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 64 of 2014

JUDGMENT:

This appeal is filed by the United India Insurance Company Limited against the Order and Decree dated 28.08.2012 passed in O.P.No.1136 of 2009 by the IV Additional Motor Accidents Claims Tribunal (Fast Track Court), Nellore, granting compensation of Rs.40,000/- to the claimant, on account of the injuries suffered by him in a motor vehicle accident that occurred on 05.04.2005.

2. Brief facts of the case are that on 05.04.2005, the claimant was proceeding on his Hero Honda Passion Motor Cycle bearing No.AP-26F-6381 towards Vedayapalem. When he reached DSR Government Head Quarters Hospital, Nellore, one Tata Sumo bearing No.AP-26W-2040 driven by its driver in a rash and negligent manner at a high speed without blowing horn, came in the opposite direction and dashed an auto-rickshaw bearing No.AP-26W-480 proceeding ahead of him, and due to the impact, the auto-rickshaw dashed against his motor cycle. As a result, the claimant fell down on the road and sustained injuries. On reporting about the accident to the SHO, South Traffic P.S. Nellore, a case was registered against the driver of offending Tata Sumo, in Crime No.40 of 2005 for the offence punishable under Sections 337 and 338 IPC. The claimant suffered injuries to his left leg, and he was admitted in D.S.R. Government Head Quarters Hospital, Nellore for medical treatment. Thereafter, he took medical treatment at Nellore under Orthopaedic Surgeon. He spent about Rs.10,000/- towards medical expenses, however, the injuries have not healed completely, due to which he is unable to walk properly, stand for long time and unable to sit and squat on the floor, thereby he became permanent disabled. Alleging that the accident occurred due to the rash and negligent driving by

the driver of Tata Sumo, the claimant filed claim petition O.P.No.1136 of 2009 before the Tribunal, claiming compensation of Rs.1,00,000/- against respondents 1 and 2, the owner and insurer of the offending Tata Sumo.

3. The Tribunal, on consideration of the evidence of PW1, and the documents Exs.A1 to A3; and the evidence of RWs.1 and 2 and the documents Exs.B1 to B6, awarded compensation of Rs.40,000/- with interest at 7.5% per annum from the date of petition till realisation, holding respondents 1 and 2, owner and insurer, jointly and severally liable to pay compensation. Aggrieved by the order passed by the Tribunal, the insurance company filed this appeal challenging the liability on the ground that the driver of the crime vehicle Tata Sumo was not having valid driving licence at the time of accident, and, therefore, it is violation of terms and conditions of insurance policy and hence insurance company is not liable to pay compensation.

4. The point for consideration in this appeal is whether the insurance company is liable to pay compensation?

5. Heard the arguments of Sri R. Venkat Rao, learned Standing Counsel for the appellant-Insurance company; and Sri K. Gopal, learned Counsel for the respondent-claimant.

6. Learned counsel for the insurance company mainly contended that the driver of the crime vehicle was not having valid driving licence by the date of accident. The insurer has examined RW1 and RW2 on his behalf and has filed documents Exs.B1 to B6 to prove that the driver of the crime vehicle was not having driving licence.

7. The Tribunal, placing reliance on the evidence of RW1-P. Vamsi, working as Junior Assistant in A.L.A. Office, Kavali; and RW2-N.Sreenivasulu, working as Assistant Manager in the

appellant-insurance company, has come to the conclusion that there is no record to establish that the driver of the offending vehicle Tata Sumo has driving licence as on the date of accident. Having held so, the Tribunal has fixed the liability against the appellant-insurance company.

8. The precise contention of the learned Standing Counsel for insurance company is that the Tribunal, having come to the conclusion that the driver of the offending vehicle Tata Sumo was not having driving licence, ought not to have fastened liability to the insurance company. Learned Standing Counsel for insurance company, placing reliance on the decision of the Hon'ble Supreme Court in **Sardari v. Sushil Kumar**[1], contended that in **Sardari,** the Hon'ble Supreme Court held that when the owner violates the terms and conditions of the insurance policy by entrusting his vehicle to a person not holding a valid driving licence, the owner alone would be held liable to pay the compensation.

9. Per contra, the learned counsel for the respondent-claimant submits that notices have not been served on the driver and owner of the offending Tata Sumo, which is evidenced by Ex.B6-attested xerox copy of the returned cover. It is contended that the insurance company has not discharged its burden by proving its plea that the driver of the crime vehicle had no driving licence at the time of accident, and that the owner had intentionally entrusted the offending Tata Sumo to the driver with full knowledge that the driver had no valid driving licence. It is further submitted that the arguments advanced by the learned counsel for the insurance company are merely based on the findings given by the Tribunal on the basis of Ex.X1-letter submitted by Motor Vehicle Inspector, Kavali, SPSR Nellore District, stating that there is no record

[1] II (2008) ACC 426 (SC)

pertaining to Ankireddy Yelamandaiah regarding his driving licence.

10. It is pertinent to note that the insurance company got marked Exs.B2 to B6 which are the attested xerox copies of legal notices got issued to Ankireddy Yelamandaiah, the driver, and B. Bhaskar Reddy, the owner of the offending vehicle. Insurance company has also filed attested xerox copy of the returned covers of legal notices. However, the burden is on the insurer to prove that the driver of the crime vehicle had no driving licence to drive the crime vehicle on the date of accident. Though the learned counsel for the appellant relied on the judgment in **Sardari**, and contended that the owner of the vehicle has entrusted the vehicle to the driver despite his not possessing driving licence, it is for the insurance company to prove its plea that the owner has entrusted the vehicle to the driver knowing well that the driver had no driving licence, which burden the insurance company has not discharged. It is also evident from the record that no case is registered against the driver of the crime vehicle under Section 188 of the Motor Vehicles Act, 1988, for not possessing driving licence. The insurance company has taken steps to prove that the driver of the crime vehicle had no driving licence to drive the crime vehicle, but could not succeed in its efforts as the insurance company has only issued notices to owner and driver, but they are returned unserved. Exs.B2 and B4 are Registered Post Acknowledge Due notices sent to driver Ankireddy Yelamandaiah, and owner Bhaskar Reddy. Ex.B3 and Ex.B5 are the postal receipts to show that notices have been sent to them. Ex.B6 is the returned cover which shows that notices have not been served. Though it is the evidence of RW1 that no record pertaining to Ankireddy Yelamandaiah could be found in manual and system search in the A.L.A., Kavali, however, no case was registered by the police under Section 188 of the Motor Vehicles Act, against the driver for not

possessing driving licence, and the insurance company failed to prove that the owner entrusted the crime vehicle to a person knowing that he had no driving licence. Therefore, the order under appeal does not require any interference, and hence, the appeal is liable to be dismissed.

11. **IN THE RESULT**, the appeal is dismissed, confirming the Order and Decree dated 28.08.2012 passed by the Tribunal in O.P. No.1136 of 2009. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

07th November 2017

Knl / ksm

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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