THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.430 OF 2011

JUDGMENT:

Appellant-2nd respondent-The National Insurance Company Ltd. filed this appeal against the award and decree dated 12.10.2010 passed in M.V.O.P.No.591 of 2008 by the Chairman, Motor Accidents Claims Tribunal (Fast Track Court)-cum-VI Additional District Judge, Rajahmundry, East Godavari District, granting compensation of Rs.72,000/- as against the claim of Rs.1,50,000/-, for the injuries sustained by the respondent-claimant in the accident occurred on 05.01.2008.

Respondent-claimant-injured filed claim petition under Rule 166 read with Rule 455 of M.V.Act alleging that on 05.01.2008 at about 7.00 p.m. while the claimant and her husband were proceeding from Mandal Revenue Office, Rangampeta, by walk to go to Bus Stand, second respondent herein drove the motor cycle bearing No.APBA 5769 in a rash and negligent manner in a high speed, came behind the claimant and dashed her, due to which, she fell down and received injuries all over the body. Immediately, she was taken to Govt. General Hospital, Rajahmundry, and from there she was taken to Govt. General Hospital, Kakinada. It is alleged that she spent Rs.50,000/- towards medical expenses, she was hale and healthy and earning Rs.3,000/- per month by doing tailoring work at the time of accident and due to the accident she lost her income. Hence, the injured claimed compensation of Rs.1,50,000/-.

The owner-cum-driver of the offending vehicle remained *ex parte*.

Appellant-Insurance Company filed counter denying the age, avocation, earnings and injuries sustained by the injured and also denied the valid and effective driving license of the driver of the offending vehicle and stated that the claim is excessive.

Based on the above pleadings, the Tribunal framed the following issues:

1) Whether the accident was occurred due to rash and negligent act of R.1 driver of Motor Cycle bearing No.AP BA 5769?
2) Whether the petitioner is entitled for claim of compensation? If so, to what amount and from which of the respondents?
3) To what relief?

On behalf of the claimant, PWs 1 and 2 were examined and Exs.A.1 to A.7 and Exs.X.1 to X.3 were got marked. On behalf of the respondents, R.W.1 was examined and Exs.B.1 to B.3 were got marked.

The Tribunal, based on the evidence available before it, held that the accident was occurred due to rash and negligent driving of the driver of the offending motor cycle. Accordingly, answered issue No.1 in favour of the claimant. Further, based on the evidence produced before it on behalf of the claimant, the Tribunal has granted compensation of Rs.72,000/- along with interest @ 7.5% per annum payable by both the respondents jointly and severally. Aggrieved by the same, the appellant-Insurance Company is before this Court by way of appeal.

Learned counsel for the appellant would contend that the driver of the motor cycle had no valid driving license to drive the motor cycle and Tribunal grossly erred in holding that the driver of the motor cycle was having valid driving licence. He would contend that the driver of the motor cycle was having a transport licence of Light Motor Vehicle. Hence, it is not a valid licence to drive the motor cycle. Therefore, the insurance Company is not liable to pay compensation to the claimant for violation of policy conditions. Learned counsel did not raise any dispute with regard to quantum of compensation awarded.

The Tribunal having considered the provisions of M.V. Act, more particularly Section 2 (21) of the M.V.Act, which defines 'Light Motor Vehicle' as under:

> '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.

had come to the conclusion that as the weight of the offending vehicle is less than 1000 kilograms, it is a light motor vehicle. Hence, the contention of the learned counsel for the appellant is that the driver of the offending vehicle was having a transport driving license of light motor vehicle, which is not a valid driving license to drive the offending motor cycle.

In the facts and circumstances of the case and in considered view of this Court, the driver of the offending motor cycle was having a transport licence of light motor vehicle Ex.B.2, hence it could not be said that driver had no valid driving licence to drive the motor cycle and violated the conditions of the policy, in view of decision of the Hon'ble Apex Court in ***Mukund Dewangan vs. Oriental Insurance Company Limited***[1] wherein it is held that holder of LMV driving licence is not required to obtain separate endorsement to drive transport vehicle of light motor vehicle class. The offending motor cycle is a light motor vehicle as defined in

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[1] 2017 ACJ 2011

Section 2 (21) of M.V.Act, as the weight of the offending motor cycle is less than 1000 kilograms and the holder of the driving licence of transport vehicle of light motor vehicle is competent to drive the motor cycle. Hence, the contention of the counsel for the appellant that the driver of the offending motor cycle had no valid driving license to drive the motor cycle is untenable. Therefore, the appellant-Insurance Company could not be absolved from payment of compensation to the claimant.

Hence, to meet the ends of justice, the Insurance Company is directed to pay compensation to claimant in terms of the award of the Tribunal, within a period of one month from the date of receipt of a copy of this order. On such deposit, the respondent-claimant is at liberty to withdraw the same.

Accordingly, the appeal is disposed of.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

28.09.2018
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