THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

MA CMA No.378 of 2018

JUDGMENT

The Insurance Company preferred the present appeal aggrieved by the award and decree dated 25.10.2017 passed in M.V.O.P.No.396 of 2016 by the Chairman, Motor Accidents Claims Tribunal-cum-Judge, Family Court-cum-III Additional District Judge, Vizianagaram.

2. Respondent No.1, who is the injured claimant, filed petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.30,000/- for the injuries sustained by her in the accident that occurred on 05.04.2016 at 13.30 hours near Ginjeru Junction, Gantyada Mandal, Vizianagaram District, while she was proceeding in an auto along with other passengers. The auto was driven by its driver in rash and negligent manner and at high speed, due to that, he lost control over the auto and dashed against the road side palmyrah tree, as a result, the petitioner and one T.J.J.Sagar fell down on the road and that the claimant sustained injuries on vital part of her body. Immediately after the accident, the claimant was shifted to the Government Hospital, Vizianagaram, where the doctor, after examination, found injury on her left leg, left face and other injuries. It is stated that on account of those injuries, the claimant was unable to meet her daily routine duties and that after discharge from the hospital, the doctor advised her to take further treatment. Thus, the accident occurred due to rash and negligent driving of the driver of auto and that on account of the injuries sustained by the

claimant, she lost her earnings at Rs.200/- per day, besides physical and mental sufferance.

3. The first respondent was driver, second respondent was owner and third respondent was insurer of the auto bearing No.AP 35 U 9837 and they are jointly and severally liable to pay compensation. Hence, the claimant prayed to award compensation.

4. The first and second respondents, who are the driver and owner of the auto, remained *ex parte* before the Tribunal

5. The third respondent-insurance company, the appellant herein, filed counter denying the material allegations while disputing the manner of accident and the injuries received by the claimant in the accident and rashness and negligence attributed to the driver of the auto. It is specifically contended that the driver was not having valid and effective driving license to drive the passenger vehicle at the time of accident and therefore, the insured had violated the terms and conditions of the policy and consequently, the insurance company cannot be made liable and prayed for dismissal of the petition.

6. In the said OP, based on the above pleadings, the Tribunal framed the following issues:

i. Whether the motor vehicle accident took place on 05.04.2016 at about 14.30 hours at Ginjeru Junction, Gantyada Mandalam, due to rash and negligent driving of auto bearing No.AP 35 U 9837 by its driver, resulting injury to petitioner?

ii. Whether the petitioner is entitled for compensation? If so, what amount and from whom?

iii. To what relief?

7. During enquiry, the claimant herself was examined as P.W.1 and marked Exs.A1 to A3. R.Ws.1 and 2 were examined and Exs.B1 to B3 and Exs.X1 and X2 were marked on behalf of respondents.

8. Upon hearing argument of both the counsel, the Tribunal found that the insurance company is liable for payment of compensation by placing reliance on the judgment of the Apex Court in **National Insurance Company Limited v. Swaran Singh and others**[1] and awarded compensation of Rs.14,000/- in favour of the claimant and against all the respondents.

9. Aggrieved by the award passed by the Tribunal, the present appeal is filed only on the ground that the driver of auto was not holding valid and effective driving license to drive the auto at the time of accident and thereby violated the terms and conditions of the policy by the insured by handing over the vehicle to the person, who was not having valid and effective driving license and in such case, the insurance company is liable to be exonerated from payment of compensation.

10. At the stage of admission, the counsel for the appellant reiterated the grounds urged in the appeal while bringing to the notice of this Court to the judgment of the Apex Court in **Mukund Dewagan v. Oriental Insurance Company Limited**[2]**.** He stated that against the said judgment, a review petition filed was before the Apex Court and it was admitted on 11.02.2017 and is pending for adjudication as there is substantial contention raised by the

[1] 2004 ACJ 1
[2] 2016(4) SCC 298

insurance company and therefore, requested this Court to exonerate the insurance company from payment of compensation.

11. There is no dispute regarding the occurrence of accident and sustaining of injuries by the claimant in view of the fact finding recorded by the Tribunal. But the only dispute is required to be decided by this Court is that the liability of the insurance company to pay compensation as the driver of auto was holding non-transport LMV license but drove the transport LMV at the time of accident. As per the driver's clause in the policy, the vehicle must be driven by a person, who holds valid and effective driving license, is not disqualified to hold the license to drive such vehicle. Here in this case, the first respondent driver was holding LMV non-transport license, but the capacity of the vehicle either transport or non-transport is one and the same, driving skills are also one and the same, except badge for driving a transport vehicle. But failure to hold LMV non-transport itself is not a ground to exonerate the insurance company from its liability as the driver of auto is eligible to drive, but did not obtain badge for driving transport vehicle. Hence, in view of the driver's clause in the policy, the driver is eligible to drive the auto, but drove the transport light motor vehicle except lack of holding a badge. Therefore, it is not a fundamental breach of trust of policy as laid by the Apex Court in **National Insurance Company Limited v. Annappa Irappa Nesaria @ Nesaragi and others**[3].

12. Therefore, mere admission of review petition filed against the judgment of the Apex Court in **Mukund Dewagan's** case, referred supra, is not a ground in view of the law as on today. Therefore, the

[3] 2008(3) SCC 464

Tribunal has rightly fastened the liability on the appellant insurance company by following the full Bench Judgment of the Apex Court in **Swaran Singh's** case, referred supra, which is the law as on today holds the field. Therefore, I find no grounds in the appeal.

13. In the result, the appeal is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand dismissed.

M. SATYANARAYANA MURTHY, J

22nd February, 2018

sj