THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1639 OF 2007

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the Insurance Company/respondent No.2 challenging the judgment and award, dated 20.03.2007, passed in O.P.No.1365 of 2004 on the file of the XXII Additional Chief Judge-cum-Motor Accidents Claims Tribunal, City Criminal Court at Hyderabad (for short, 'the Tribunal').

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the present appeal are, briefly, as follows:

One P.Sathaiah (hereinafter referred to as 'the deceased') was proceeding to his house on a Scooter bearing No.AP-23A-5696 after attending the office work. When he reached near Jillellaguda Village Shivar, the driver of the auto trolley bearing No.AP-23T-9604 had driven the same in a rash and negligent manner and dashed against the scooter of the deceased. The accident occurred due to the rash and negligent driving of the driver of the auto trolley bearing No.AP-23T-9604 against whom, the Station House Officer, Chinnakodur Police Station, registered a case in Crime No.76 of 2003 for the offence punishable under Section 304-A I.P.C. Due to accident, the deceased died on the spot. By the time of accident, the deceased was aged about 50 years and used to earn Rs.6,407/- as Gangman in Panchayat Department, Siddipet. Petitioner No.1 is the wife and petitioner Nos.2 and 3 are sons of deceased, who are dependants on the income of the deceased. The first respondent is the owner of the auto trolley bearing No.AP-23T-9604, which was insured with the second respondent company vide cover note No.355785 with effect from 21.10.2002 to 20.10.2003. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.5,50,000/- to the petitioners with interest at the rate of 18% per annum from the date of petition till the date of realisation.

4. The first respondent filed counter *inter alia* contending that the accident occurred due to the rash and negligent driving of the Scooter bearing No.AP-23A-5696 by the deceased and there was no negligence on the part of the driver of the auto trolley bearing No.AP-23T-9604. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. The auto trolley bearing No.AP-23T-9604, which belongs to this respondent, was insured with the second respondent company; therefore, the second respondent alone is liable to pay compensation, if any, to the petitioners. Hence, the petition may be dismissed.

5. The second respondent filed counter denying all the averments made in the petition *inter alia* contending that the auto trolley bearing No.AP-23T-9604 did not involve in the accident that occurred on 01.10.2003. The driver of the auto trolley bearing No.AP-23T-9604 was not having valid and effective driving licence as on the date of accident; therefore, there is no contractual obligation on the part of this respondent to indemnify the liability of the first respondent. The amount of compensation claimed by

the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

6. Basing on the above pleadings, the Tribunal framed the following issues:

(1) Whether the accident in question took place on 01.10.2003 on account of the rash and negligent driving of auto trolley bearing No.AP 23T 9604 by its driver?

(2) Whether the petitioners are entitled for compensation? If so, to what amount and from whom?

(3) To what relief?

7. During the course of enquiry, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Exs.B.1 and B.2 were marked.

8. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the auto trolley bearing No.AP-23T-9604, which resulted in the death of the deceased and allowed the petition by granting compensation of Rs.5,50,000/- to the petitioners with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

9. Feeling aggrieved by the judgment and award of the Tribunal, the second respondent-insurance company preferred the present appeal.

10. Learned counsel for the second respondent (appellant) strenuously submitted that the auto trolley bearing No.AP-23T-

9604 was not involved in the accident that occurred on 01.10.2003 and that aspect was not considered by the Tribunal. The Tribunal awarded the compensation on assumptions and presumptions; therefore, it is a fit case to allow the appeal.

11. Learned counsel for the petitioners (respondent Nos.1 to 3) submitted that the Tribunal, taking into consideration the recitals of Exs.A.1, A.4 and A.5, arrived at a conclusion that the auto trolley bearing No.AP-23T-9604 involved in the accident that occurred on 01.10.2003. He further submitted that the Tribunal has assigned reasons much less cogent and valid reasons to its findings. He also submitted that the Tribunal awarded just and reasonable compensation to the petitioners; therefore, the appeal is liable to be dismissed.

12. Basing on the rival contentions, the points that arise for consideration in this appeal are:

1. Whether the accident occurred due to the rash and negligent driving of the driver of the auto trolley bearing No.AP-23T-9604, which resulted in the death of the deceased? and
2. Whether the amount of compensation awarded by the Tribunal is just and reasonable?

POINT No.1:

13. As per the testimony of PW.1, the accident occurred due to the rash and negligent driving of the driver of the auto trolley bearing No.AP-23T-9604. His testimony further reveals that his father died due to injuries sustained in a road accident that occurred on 01.10.2003. As per the testimony of PW.2, the accident occurred due to the rash and negligent driving of the

driver of the auto trolley bearing No.AP-23T-9604. If the testimony of PW.2 is taken into consideration, there was no negligence on the part of the deceased to cause the accident. Learned counsel for the second respondent cross-examined this witness at length before the Tribunal, but nothing was elicited to shake his testimony so far as the manner of the accident is concerned. Admittedly, RWs.1 and 2 are not eye witnesses to the accident. Therefore, their testimony is no way helpful to the respondents to substantiate their stand. It is not in dispute that the accident occurred on 01.10.2003. The Motor Vehicles Inspector inspected the auto trolley bearing No.AP-23T-9604 on 03.01.2004. The Motor Vehicles Inspector report Ex.A.4 clearly discloses that the auto trolley bearing No.AP-23T-9604 involved in the accident. The respondents did not choose to examine the Motor Vehicles Inspector in order to falsify the recitals of Ex.A.4. As per the recitals of Ex.A.1-certified copy of F.I.R. and Ex.A.5-certified copy of charge sheet, the accident occurred due to the rash and negligent driving of the driver of the auto trolley bearing No.AP-23T-9604. The recitals of Ex.A.5 clearly reveal the involvement of auto trolley bearing No.AP-23T-9604 in the accident that occurred on 01.10.2003. I have carefully scanned the counter filed by the second respondent before the Tribunal. The second respondent has not taken a specific plea in the counter that the auto trolley bearing No.AP-23T-9604 did not involve in the accident that occurred on 01.10.2003. Any amount of oral evidence without a pleading is of no avail. A perusal of Ex.A.2-certified copy of inquest report and Ex.A.3-certified copy of post-mortem report clearly reveals that the deceased died due to the injuries sustained in the road accident that occurred on 01.10.2003. The Tribunal considered the oral and documentary evidence in right perspective and arrived at a conclusion that the auto trolley bearing No.AP-23T-9604 involved in the accident. The Tribunal has assigned reasons much less cogent and convincing reasons to its findings. I am fully endorsing the finding recorded by the Tribunal. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the appellant that the auto trolley bearing No.AP-23T-9604 did not involve in the accident that occurred on 01.10.2003.

POINT No.2:

14. The material available on record clinchingly establishes that the deceased was aged about 50 years by the time of death. The Tribunal has rightly taken the multiplier as '11'. The oral testimony of PW.1 coupled with Ex.A.7-Salary Certificate clearly reveals that by the time of accident, the deceased was drawing a salary of Rs.6,721/- per month. The Tribunal has rightly taken the net salary of the deceased as Rs.6,123/- per month. The Tribunal has deducted 1/3rd towards the personal expenses of the deceased. The Tribunal granted an amount of Rs.5,38,000/- towards loss of dependency. The Tribunal also granted an amount of Rs.2,000/- towards funeral expenses, Rs.15,000/- towards consortium and Rs.10,000/- towards loss of estate. The Tribunal arrived at a conclusion that the claimants are entitled for compensation of Rs.5,65,000/- and restricted the compensation to Rs.5,50,000/- in view of the relief sought by the petitioners. The petitioners have not filed at least cross-objections. In view of non-filing of the cross-objections, this Court has no other alternative

except to confirm the compensation awarded by the Tribunal. The compensation awarded by the Tribunal under various heads is just and reasonable to meet the ends of justice.

15. It is the contention of the learned counsel for the second respondent that the first respondent had violated the terms and conditions of the policy. As seen from the testimony of RWs.1 and 2, the driver of the auto trolley bearing No.AP-23T-9604 was having licence to drive light motor vehicle non-transport. A perusal of Ex.B.1 reveals that the driver of the auto trolley was having licence to drive the light motor non-transport vehicle. It is needless to say the driving skill required for driving of the light motor vehicle transport and non-transport is one and the same. The fact remains that the driver of the auto trolley was not having a badge to drive the transport vehicle as on the date of accident. Mere non-holding of badge by itself would not amount to fundamental breach of terms and conditions of the policy so as to absolve the liability of the insurer. In order to resolve this issue, this Court is placing reliance on the following decisions:

In *S.Iyyapan Vs. United India Insurance Co.*[1], the Hon'ble apex Court held as follows:

> 17. 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,
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> (*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.

[1] (2013) 7 SCC 62

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.

18. 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[5] is, therefore, liable to be set aside.

19. We, therefore, allow this appeal, set aside the impugned judgment of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. However, there shall be no order as to costs.

In ***Kulwant Singh and others Vs. Oriental Insurance Co. Ltd***[2]**,** the Hon'ble apex Court held as follows:

> 10. In S. Iyyapan (supra), the question was whether the driver who had a licence to drive 'light motor vehicle' could drive 'light motor vehicle' used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed:
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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 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."
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> No contrary view has been brought to our notice.
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> 11. Accordingly, we are of the view that there was no breach of any condition of insurance policy, in the present case, entitling the Insurance Company to recovery rights.

[2] 2014 ACJ 2873

The principle enunciated in the cases cited supra is squarely applicable to the facts of the case on hand.

16. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am unable to accede to the contention of the learned counsel for the second respondent that the first respondent had violated the terms and conditions of the policy so as to absolve the liability of the second respondent.

17. It is an admitted fact that the auto trolley bearing No.AP-23T-9604 was insured with the second respondent company with effect from 21.10.2002 to 20.10.2003. Ex.B.2-policy was in force as on the date of accident; therefore, the second respondent has to indemnify the liability of the first respondent. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners. There are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal. The appeal lacks merits and *bona fides.*

18. In the result, the Appeal is dismissed. There shall be no order as to costs in this appeal.

19. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 13.04.2018
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