THE HON'BLE MS JUSTICE J.UMA DEVI

M.A.C.M.A.No.1222 of 2011

JUDGMENT:

Bajaj Allianz General Insurance Company Limited, which has been arrayed as 2nd respondent in M.V.O.P.No.118 of 2010, on the file of the Motor Vehicles Accidents Claims Tribunal-cum-Additional District Judge-cum-Judge, Family Court, Guntur (for short "the Tribunal"), has come before this court by preferring the present appeal, challenging the Award, dated 22.02.2011, whereby a direction is given to it to pay the awarded compensation amount of Rs.1,17,750/- to the claimant and then recover the compensation so paid from the vehicle owner whose liability it agreed to indemnify by virtue of the policy obtained from it, subject to the terms and conditions mentioned therein.

Heard both sides and perused the record.

The prime contention of the Insurance Company is that the Tribunal even after coming to the conclusion that the driver of the Auto had no valid and effective driving licence at the relevant point of time and gave a finding that the appellant-Insurance Company cannot be held liable to pay compensation, as the case has not been contested by the owner of the crime vehicle, wrongly directed it to pay the compensation to the claimant, latter to recover the same from the vehicle owner. The appellant further contends that the Tribunal completely erred in fastening the liability against the insurance company on par with the vehicle owner even though the driver had no valid and effective driving licence to drive a passenger carrying commercial vehicle (transport). The appellant further contends that the Tribunal though took note of the principle laid down in the judgments of the Apex Court in *National Insurance Co.Ltd. vs. Kaushalaya Devi*[1] and

[1] 2008 ACJ 2144

New India Assurance vs. Roshen Ben Rahemanshe[2] where it was held that "*the Insurance Company cannot be held liable to pay compensation if the driver is not having valid and effective licence*", wrongly ordered for 'pay and recovery' though it has no power to pass such an order. The appellant further contends that the direction given by the Tribunal to the appellant to satisfy the award first by making payment of compensation amount to the claimant, and then to recover the compensation so paid from the owner of the vehicle by initiating appropriate proceedings against him is against to the judgments rendered by the Apex Court in the cases cited above.

From the aforementioned contentions of the appellant-insurance company, it is understood that the prime contention of the appellant-insurance company is that the driver of the offending vehicle was not possessing a valid and effective driving licence to drive the crime vehicle and that there was fundamental breach of material terms and conditions of the policy by the vehicle owner, who handed over his vehicle to such a person. Therefore, the only question which needs to be answered is, "*whether the direction given to the appellant-insurance company to satisfy the award by making payment of the compensation amount to the claimant and then to recover the compensation so paid from the vehicle owner by initiating proceedings against him is improper and unsustainable in law?*

The appellant-insurance company, apart from raising a contention that there is fundamental breach of terms and conditions of the policy by the vehicle owner by handing over the vehicle to a person who does not have licence to drive the transport vehicle at the material point of time, has raised yet another contention that the Tribunal wrongly assessed the income of the claimant at Rs.6,12,000/- and arrived a sum of Rs.61,200/- taking into consideration the evidence of PW 2, who deposed that the claimant had

---
[2] 2008 ACJ 2161

suffered disability of 10% though he was not competent enough to state about the percentage of disability suffered by the claimant in the accident, and he was not a Member of the Medical Board also.

As the main challenge of the appellant-insurance company is as to the fastening the initial liability of payment of compensation as against it and then to recover the compensation so paid from the vehicle owner, it is relevant to see whether any evidence is adduced by the insurance company in proof of establishing its contention that the driver of the crime vehicle has no valid and effective driving licence at the material point of time to drive a passenger carrying commercial vehicle.

The insurance company summoned the driving licence particulars of the driver of the crime vehicle and examined RW 2 to speak about the particulars of the driving licence possessed by the driver of the crime vehicle and marked Ex.X3 driving licence extract of the driver of the crime vehicle, which would show that the driver of the crime vehicle had no licence to drive a transport vehicle and that he possessed a licence to drive a non-transport vehicle only. The Tribunal, upon careful consideration of the evidence of RW-2, who during course of his examination spoke about the contents of Ex.X3, wherefrom it was clear that the driver of the crime vehicle had the licence to drive a non-transport vehicle gave a finding that there is fundamental breach of the terms and conditions of the policy by the owner of the crime vehicle.

It is true that the Tribunal upon consideration of the evidence of RW 2 has held that the appellant-insurance company cannot be held liable to pay compensation, as there is fundamental breach of terms and conditions of the policy by the owner of the crime vehicle by handing over his vehicle for purpose of driving to a person who does not possess a valid and effective driving licence to drive a transport vehicle.

The facts on record would indicate that while the claimant was coming towards Mangalagiri on his Moped along with his mother and when he reached near ILTD, Yerrabalem village, the Moped driven by him was hit by the Auto bearing registration No.AP16-TT2298, which was driven by its driver in a rash and negligent manner. Due to non-possessing of a valid and effective driving licence by the auto driver (who according to the appellant-insurance company, had the licence only to drive a non-transport vehicle), the claimant, who was no way concerned with the terms and conditions of the policy, should not to suffer. The Tribunal, having thought it appropriate to fix the initial liability of payment of compensation as against the insurance company, had directed it to pay the compensation, if any, awarded to the claimant and recover it subsequently from the owner of the vehicle who breached the terms and conditions of the policy.

The above finding of the Tribunal in my considered opinion cannot be faulted.

As the breach that is committed by the owner of the vehicle is apparent, the Insurance Company can be directed to pay the compensation and recover the same from the insured/1st respondent in accordance with law.

At this juncture it is apt to mention what the Hon'ble Supreme Court held in *Oriental Insurance Co.Ltd. v. Nanjappan*[3]:

> "While setting aside the judgment of the High court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and

[3] 2004 ACJ 721

the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

In so far as the other contention of the appellant is concerned, the court below considered the claimant's earnings per day at Rs.100/- notionally placing reliance on the judgment of the Apex Court in *Lakshmi Devi vs. Mohammad Tabbar*[4] and granted compensation of Rs.61,200/- under the head of loss of earning capacity (as it is deposed by PW 2 that the claimant suffered disability of 10%). Looking into the evidence of PW 2 and the wound certificate Ex.A3 where from it is clear that there is post traumatic stiffness of the knee joint, the court below awarded Rs.20,000/- under the head of "pain and suffering" and Rs.36,549/- under the head of "medical expenditure". On overall consideration of the evidence on record, this court thinks that the compensation awarded is just and reasonable.

As it found that the Tribunal has not committed any error in passing of the award, dated 22.02.2011, in M.V.O.P.No.118 of 2010, following the decision of the Supreme Court in *Oriental Insurance Co.Ltd. v.*

---

[4] 2008 ACJ 1488

Nanjappan (3 supra), the appeal filed by the Insurance Company fails and the same is hereby dismissed.

Pending miscellaneous applications, if any, shall stand closed in consequence.

J.UMA DEVI,J

28th December, 2018
Dsr