THE HONOURABLE Ms. JUSTICE J. UMA DEVI

MACMA.No.1989 of 2010

JUDGMENT:

This appeal is filed by Bajaj Allianz General Insurance Company Limited represented by its Divisional Manager, questioning the judgment and decree dated 16.08.2010 passed in M.V.O.P.No.14 of 2008 on the file of the II Additional District & Sessions Judge (Fast Track Court) at Sangareddy.

2. The 1st respondent herein, who is the claimant, in O.P.14 of 2008 has laid the claim before the Court below for compensation of Rs.2,00,000/- as against the Insurance Company, the appellant herein, and the owner of the auto bearing No. AP 23 W 0720 asserting that on 12.06.2007 at about 4.00 p.m., while he was proceeding in the said auto towards his village, when the auto reached near Challagidda Thanda, it turtled due to rash and negligent driving of it by its driver and as the result of it, he received injuries. It was contended by him that he is to be compensated reasonably by the owner and insurer of the said auto as he lost the source of his livelihood as he became incapable of attending to any work due to the injuries received by him in the accident which occurred due to negligent driving of the auto in which he travelled.

3. The Court below, on appreciation of oral and documentary evidence, awarded compensation of Rs.1,00,000/- to the claimant and directed the Insurance Company and the owner of the offending auto

to pay the said compensation together with interest at 7.5% per annum from the date of filing of the petition till realisation.

4. Feeling aggrieved by the award passed by the Court below granting compensation of Rs.1,00,000/-, the insurer of the offending auto preferred the present appeal.

5. The main contention of the appellant is that the owner of the offending auto breached the terms and conditions of the policy by handing over his auto to a person who did not possess valid and effective driving licence; failure on the part of the owner of the auto to contest the case itself shows that he breached the terms and conditions of the policy; owner of the auto has not responded to the notice given by the Insurance Company and intentionally evaded to receive the notice issued by the Insurance Company; the person who drove the offending auto at the relevant point of time was none other than the son of the owner of the offending auto; the Insurance Company by sending notice to the owner of the vehicle had discharged its burden of establishing the fact that the driver of the offending auto had no valid and effective driving licence as on the date of the accident; and the Court below, without taking note of aforesaid aspects, which were proved by the Insurance Company by way of production of Exs.B2 and B3, fastened the liability as against the appellant herein and directed it and the owner of the crime auto to pay compensation jointly and severally.

6. I have perused the award challenged in the present appeal, the pleadings of the parties and also the evidence available in the case record.

7. The appellant seems to have raised a contention before the Court below that the auto, in which the claimant travelled at the relevant point of time, was carrying 4 passengers, though it was meant for carrying 3 passengers, and this fact was spoken to by PW.1 in his cross-examination. It also raised a contention that the auto driver, who was not trained well, could not able to control the auto due to overloading of it by the passengers.

8. The Court below, on appreciation of evidence of PW.1, whose evidence was corroborated in all aspects with the documentary evidence which he produced, held that the accident occurred due to rash and negligent driving of the auto by its driver, as no evidence was there on record supporting the contention of the Insurance Company that the accident occurred because of overloading of the auto by the passengers, and there was no allegation in the charge sheet that inconvenience was caused to the driver while driving of the auto due to sitting of a passenger by his side. The Court below placed reliance on the judgment of this Court in **Mandapati Sambasiva Rao and others v. T. Srinivasa Rao and another**[1], and held that because of carrying 4 passengers in the auto, instead of 3, the Insurance Company could not have claimed exemption from the liability on the

[1] 2008 (1) ALT 511

ground that the auto was overloaded, particularly in the absence of evidence as to aspect that carrying of more passengers than the capacity of the auto was the main cause for occurrence of the accident.

9. Coming to the other contention raised by the Insurance Company that the terms and conditions of the policy were breached by the owner of the auto by handing over his auto to a person who did not possess valid and effective driving licence etc., is concerned, Exs.B2 and B3 were the only documents produced by the Insurance Company to seek complete exemption from the liability of payment of compensation. Exs.B2 and B3 legal notice and the returned postal cover along with acknowledgment would only show that the legal notice sent to the owner of the auto was returned unserved with the endorsement “addressee left the given address, and his whereabouts not known.”

10. There is no dispute that the driver of the auto is charge sheeted as the accused in C.C.No.18 of 2007 on the file of the Judicial First Class Magistrate, Narayankhed. He is the son of the owner of the crime vehicle. Simply because of the reason that the case is not contested by the owner of the crime vehicle, and that the notice issued to him returned with the endorsement that the addressee left the given address, it cannot be presumed that the person who drove the crime vehicle at the time of accident had no valid and effective driving licence. Moreover, no steps are taken by the Insurance Company to

examine the driver of the crime vehicle, though his address is readily available to them as the criminal case filed against him is registered as C.C.No.18 of 2007 on the file of the Judicial First Class Magistrate, Narayankhed.

11. If the Insurance Company's contention is that the terms and conditions of the policy are breached by the owner of the crime vehicle by handing over the vehicle to a person who does not possess valid and effective driving licence, burden heavily lies on it to establish such contention by summoning the driving licence extract of the driver from the concerned authorities. If the correct address of the owner of the vehicle is not available with the Insurance Company, nothing prevented it from summoning the driver of the crime vehicle whose address particulars are found in the charge sheet filed in C.C.No.18 of 2007. For establishing its plea of defence, no endeavour is made by summoning the concerned authorities from the RTA Department or summoning the driver, whose address is readily available in the charge sheet filed in C.C.No.18 of 2007. By producing a returned legal notice said to be addressed to the owner of crime vehicle, the Insurance Company cannot evade its liability to pay the compensation to the claimant. In this context, I feel it apt to quote the observations made in **National Insurance Company Ltd., v. Nirabjit Kaur and others[2],** "*merely because the notice issued to the owner to produce the driving licence is not served, the Insurance*

---

[2] 2010 ACJ 121

Company cannot be absolved from its liability." In the present case also, the Insurance Company had issued notice to the owner of the crime vehicle to produce the driving licence, but the same was not served. The Insurance Company had neither taken any steps to examine the driver nor summoned the driving licence particulars of the driver of the crime auto from the concerned RTA.

12. In **United India Insurance Co. Ltd. v. Rakesh Kumar Arora and others[3],** which the appellant's counsel seeks to rely, the vehicle was driven by a minor boy aged 15 years, who had no licence to drive the vehicle as on the date of accident. Therefore, the owner of the vehicle, who was his father, alone was held liable to pay the compensation, as he handed over his vehicle to his minor son for the purpose of driving knowing fully well that he had no licence to drive the vehicle. In the case on hand, the driver of the crime vehicle was a major, and it was not proved that he had no valid and subsisting driving licence, and that the charge sheet would not show that he had no licence to drive the auto.

13. In **Sardari and others v. Sushil Kumar and others[4],** it was admitted by the tractor driver that he had no licence to drive the tractor. In the case on hand, the driver of the crime vehicle was not charge sheeted for not possessing valid driving licence, and that the Insurance Company did not take any steps to examine him as a

---

[3] 2008 ACJ 2855
[4] 2008 ACJ 1307

witness to prove its plea of defence that he had no driving licence at all.

14. In the light of the afore-mentioned discussion, this Court is of the view that the trial Court has rightly found that there is no merit in the contention of the Insurance Company that the terms and conditions of the policy are breached by the vehicle owner.

15. The present appeal filed by the Insurance Company challenging the award, dated 16.08.2010, passed by the II-Additional District and Sessions Judge (Fast Track Court) at Sangareddy, fails for reasons mentioned above and the same is hereby dismissed accordingly without costs.

As a sequel, miscellaneous petitions, if any, pending shall stand dismissed.

JUSTICE J. UMA DEVI

31.08.2018
v v