THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 1146 of 2009

JUDGMENT:

This appeal arises out of the Judgment, dated 16th January 2006, in O.P.No.1429 of 2001 on the file of the Chairman, Motor Accident Claims Tribunal (Fast Track Court), Nizamabad at Kamareddy.

The original petition was filed under Section 166 of Motor Vehicles Act, 1988, by the appellant herein, claiming compensation of □ 1 lakh on account of the injuries sustained by him in a motor vehicle accident that took place on 27.09.2001, at about 11:15 AM. On the fateful day the petitioner was going along with others in an auto bearing No.AP-11U- 4392, when the Auto reached near Laxmi Saw Mill at Nizamsagar road, Kamareddy at about 11:15 AM, the driver of the auto had driven it in a rash and negligent manner, at a high speed and last control over it, due to which the auto turned turtle. The petitioner received multiple injuries to his legs and grievous injuries to his head and various parts of the body. The petitioner and others in the auto were shifted to government hospital. The petitioner incurred medical expenditure of □ 60,000 for his treatment. The respondent No.1 is the owner of the vehicle. He has taken a plea in his counter that the vehicle involved in the accident was insured with 2nd respondent vide insurance policy No.258/2002, valid from 17/04/2001 to 16/04/2002, with a cover note No.95331. The insurance policy was in force by the date of accident. The respondent further pleads that the 2nd respondent alone is responsible for the payment of compensation to the petitioner. It is further submitted that the driving licence was in force from 15/05/2002 to 14/05/2003.

The 2nd respondent denied that the policy was valid from 17/04/2001 to 16/04/2002. It is alleged that the 1st respondent has not intimated about the alleged accident to the 2nd respondent, and furnished the particulars of permit, driving licence, and RC book of the crime vehicle. Therefore, it is pleaded that the respondent is not liable to pay any compensation. It is further pleaded that if any compensation is liable to be paid by the 2^{nd} respondent, he is entitled to recover the same from the 1^{st} respondent. On these grounds, the 2^{nd} respondent sought for dismissal of the petition.

The Tribunal, on consideration of the evidence of witness PW.1 and the documents Exs.A1 to A6 on behalf of the petitioner; and the evidence of witness RW1 and the documents Exs.B1 to B5 on behalf of the 2^{nd} respondent, partly allowed the claim petition, by awarding an amount of □18,000 towards compensation with interest at 9% per annum, from the date of petition till realization. The Tribunal, however, dismissed the claim against the 2^{nd} respondent insurance company.

Aggrieved by the impugned judgment, the present appeal has been filed by the claimant challenging the quantum of compensation as well as the exonerating the liability against respondent No. 2 insurance company.

Heard the arguments of the learned counsel for the appellant-claimant, and learned standing counsel for the insurance company.

Learned counsel for the appellant submits that the Tribunal has exonerated the liability of respondent No.2 on the ground that the driver of crime vehicle had no valid driving licence as on the date of the accident. It is further pleaded that the findings of the Tribunal with regard to the exoneration of the liability of insurance company may be set aside and the insurance company may be directed to pay compensation in the first instance and recover the same from the owner of the vehicle.

Learned standing counsel for the respondent-insurance company submits that the respondent got examined RW1 and got marked Exs.B1 to B5 to prove that the insurance company has taken all steps for securing the driving licence of the driver of the crime vehicle. Therefore, the insurance company is not liable to pay any compensation to the petitioner.

The findings of the Tribunal in this regard are that as the driver of the Auto was not having valid driving licence to drive the auto, and violated the terms and conditions of the policy, the 2nd respondent is not liable to pay the compensation. The findings of the tribunal are under challenge in this appeal.

The point for consideration in this appeal is;

1. Whether the exoneration of liability of the 2nd respondent insurance company by the Tribunal is in accordance with law?
2. Whether the appellant is entitled for enhancement of compensation?

As far as the exoneration of liability of the 2nd respondent-insurance company is concerned, the Tribunal has not considered the evidence RW1, and the documents filed by the insurance company to discharge its burden that the insurance company has taken steps for verifying the licence of the driver of the crime vehicle, to find out whether it was in force by the date of accident or not. The learned standing counsel for respondent submits that the respondent got issued a Ex.B1-legal notice, Ex.B2-Postal receipts, Ex.B3-postal acknowledgement cards reveal that the driver of the crime vehicle has no valid driving licence by the date of accident. The findings of the Tribunal in this regard are that as RW1 has stated that on the date of accident the driver of the auto drove it without a valid driving licence, the 2nd respondent is not liable to pay compensation. The Tribunal has not discussed anything about the documents relied on by the insurance company. It has jumped to the conclusion that the driver of the crime vehicle is not having valid driving licence as on the date of accident. The addressing letters by insurance company to produce the driving licence to discharge its liability has not been discussed by the Tribunal. Merely because RW1 has stated that on the date of accident the driver of auto has no valid driving licence, it cannot be taken into consideration as a fact proved by the insurance company. There is no cogent evidence on record to show that the driver of the crime vehicle was not having valid driving licence by the date of accident.

In this regard it is to be seen that whether the insurance company discharged its burden, by proving that the driver of the crime vehicle has no valid driving licence by the date of accident.

The burden of proof lies on the insurance company to prove that the driver was not holding a valid and effective driving licence by the date of accident. Though the insurance company has examined RW1 and got marked Exs.B1 to B3, they are not sufficient to come to a conclusion that the driver of the crime vehicle does not possess a valid driving licence. It is appropriate to place reliance on the judgment of the Hon' ble Supreme Court in Rukmani vs. New India Assurance Co. Ltd.[1]

> **"(3) We have seen the only evidence which the Insurance Company produced in support of the plea. This is the evidence of Inspector of Police who investigated the accident. In his evidence, PW 1 who was the Inspector of Police, stated in his examination-in-chief. "My enquiry revealed that the 1st respondent did not produce the licence to drive the above said scooter. The 1st respondent even after my demand did not submit the licence since he was not having it." In his cross-examination he has said that it is the Inspector of Motor Vehicles who is required to check whether the licence is there but he had not informed the Inspector of Motor Vehicles that the 1st respondent was not having a licence since he thought it was not necessary. In our view, this evidence is not sufficient to discharge the burden which was cast on the Insurance Company. It did not summon the driver of the vehicle, No record from the Road Transport Authority has also been produced. In these circumstances, the Insurance Company has not discharged the burden cast upon it under Section 96(2)(6)(ii) of the Motor Vehicles Act, 1939. The impugned order of the High Court is, therefore, set aside and the order of the Tribunal is restored. The appeal is allowed accordingly. No order as to costs."**

[1] **1999 ACJ 171 SC**

In **National Insurance Company Ltd. v. Swaran Singh and others**[2], the Hon' ble Supreme Court held that that the onus is on the Insurance Company to establish the breach on the part of the owner of the vehicle that the owner had entrusted the vehicle knowing well that the driver had no valid driving licence.

In the instant case, the Tribunal, placing reliance on the evidence of RW1 has come to the conclusion that the driver of the crime vehicle was not possessing valid driving licence as on the date of accident. Except referring to the fact that RW1 was examined and he filed the documents Exs.B1 to B3, nothing is stated in the judgment about the efforts made by the insurance company for securing the driving licence of the driver.

In the light of the judgments referred above, the liability of the insurance company cannot be exonerated totally, and the insurance company is liable to pay the compensation to the claimants in the first instance, and then recover the same from the owner of the vehicle by following the procedure laid down in the case of **Oriental Insurance Company v. Nanjappan**[3]

Coming to the quantum of compensation, the petitioner suffered five simple injuries in the accident. The Tribunal, placing reliance on Ex.A3 injury certificate, held that the petitioner is entitled for compensation for the injuries and awarded Rs.3,000/- for each injury, and Rs.3,000/- towards pain and suffering, thus, totaling to Rs.18,000/-. The compensation awarded by the Tribunal is not just and reasonable in view of the nature of injuries suffered by him. The petitioner was agriculturist and was earning Rs.6,000/- per month. Due to the injuries, he must have taken treatment and could not have attended to agricultural activities and suffered loss of earnings. He is also entitled for extra nourishment and

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[2] (2004) 3 SCC 297

[3] 2005 SCC (Cri) 148

transportation charges. Therefore, considering the facts and circumstances of the case, it would meet the ends of justice if the compensation awarded by the Tribunal is enhanced from Rs.18,000/- to Rs.30,000/-.

IN THE RESULT, the appeal is partly allowed, by enhancing the compensation awarded by the Tribunal from Rs.18,000/- to Rs.30,000/-, with proportionate costs and interest at 7.5% per annum from the date of petition till realisation. The 2nd respondent insurance company is directed to pay the compensation amount to the petitioner-claimant, in the first instance, within one month from the date of receipt of a copy of this order; and then recover the same from the owner of the vehicle, as per the procedure laid down in **Nanjappan** (3 supra).

Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

11th July, 2018
DR / Ksm

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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DR