

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.NO.3697 OF 2012

JUDGMENT:

This appeal is arising out of the order dated 22.05.2009 passed in MVOP.No.834 of 2008 by the Chairman, Motor Vehicles Accidents Claims Tribunal (District Judge), Guntur, wherein compensation of Rs.8,23,000/- with interest at 7% per annum from the date of petition till the date of realisation against respondents 1 and 2, the owner and insurer of the crime vehicle, was granted.

The appellant herein is the Reliance General Insurance Company Ltd. The brief facts of the case are that on 05.04.2008 at about 5.30 pm, while the deceased was proceeding in an auto bearing No.AP-7-TU-3691 owned by the first respondent from Chilakaluripet to Yedlapadu Village, when reached near Ganapavaram main road, the driver of the auto drove it at high speed and in rash and negligent manner and applied brakes suddenly to the auto resulting the deceased falling from the auto and sustaining grievous injuries. On account of the death of the deceased on 10.04.2008, his legal heirs, petitioners 1 to 6 have filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.12 lakhs on account of his death in the accident against R-1, the owner and the insurer. The first respondent was set *ex parte* before the Tribunal and the second respondent filed written statement denying the liability and the rash and negligent driving of the first respondent's vehicle and also contended that the driver of the auto was not having valid driving license as on the date of the accident and that the auto was

overloaded and therefore, sought for exonerating the liability of the second respondent. The Tribunal, on consideration of the evidence of P.Ws.1 to 3 and Exs.A1 to A7 and Ex.X1 on behalf of the petitioners and R.W.1 and Exs.B1 to B3 on behalf of the respondents, has allowed the claim petition in part and awarded compensation of Rs.8,23,000/- with interest at 7% per annum from the date of petition till the date of realisation. Aggrieved by the impugned award, this appeal has been preferred by the Insurance Company.

Heard the arguments of the learned counsel for the appellant and the learned counsel for the respondents.

Learned counsel for the appellant submits that the driver of the crime vehicle is not having valid driving license. The driver of the auto has produced Ex.B2-driving license which shows that the license was meant for non-transport purposes whereas the crime vehicle is a passenger commercial (transport) vehicle. Therefore, learned counsel for the Insurance Company placed reliance on the decision reported in **Mukund Dewangan v. Oriental Insurance Company Ltd.**,¹ to submit that against the decision rendered in the case of **S.Iyyapan v. United India Insurance Company Limited and another**² and other cases with regard to validity of the driving license and the nature of the vehicle, a review has been filed before the Hon'ble Apex Court and it has been admitted on 11.02.2017. However, learned counsel submits that there is no interim order staying the operation of the judgments passed earlier including the case of **S.Iyyapan**².

¹ (2016)4 SCC 298

² (2013)7 SCC 62

On consideration of the submissions of the learned counsel for the appellant and the respondents, since the decision rendered in **S.Iyyapan²** still holds good, there are no valid reasons to set aside the award passed by the Tribunal as the driver of the crime vehicle was possessing a license to drive a non-transport vehicle and has driven a transport vehicle. The liability of the insurer cannot be exonerated on this ground and therefore, there are no valid grounds to interfere with the findings of the Tribunal in this case.

In the result, the appeal is dismissed confirming the award passed by the Tribunal in MVOP.No.834 of 2008. The appellant is directed to deposit the balance of compensation amount within one (1) month from the date of receipt of a copy of this order. On such deposit, the respondents-claimants are permitted to withdraw their respective shares as apportioned by the Tribunal. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(GUDISEVA SHYAM PRASAD, J)

23rd February 2018
RRB