SMT JUSTICE T.RAJANI

MACMA.No.277 OF 2012

JUDGMENT:

This appeal is preferred against the judgment of the III Additional District Judge, Ananthapoor, in O.P.No.11 of 2008, dated 30.11.2009, by virtue of which, the court below awarded Rs.2,98,000/- along with interest @7.5% per annum to be paid by respondents 1 and 2 therein jointly and severally.

2. The case of the claimants is that, the deceased, on the date of incident i.e., on 09.03.2006, was travelling in an auto and at about 7 or 8 A.M., when the auto reached Gummalakunta on Bathalapalli road, the driver of the auto drove it in a rash and negligent manner and lost control and consequently, the auto turned turtle. The deceased sustained grievous injuries and was shifted to Government Hospital, Ananthapur, but he succumbed to the injuries on 13.03.2006 at about 05.00 A.M., while undergoing treatment.

3. The lower court after considering the rival contentions, passed the impugned judgment, against which, this appeal is preferred on the ground that the court below failed to appreciate that the driver of the crime vehicle was not having valid driving license as on the date of accident and that the same was spoken to by R.W.2. He stated that the driver is authorized to drive only non-transport vehicle, but the vehicle involved in the accident is a transport vehicle. On the basis

of the above ground, the appellant seeks to set aside the judgment of the trial court.

4. Heard the counsel for the appellant. None appears for the respondent.

5. The counsel for the appellant states that the driver was in fact holding driving license to drive non-transport auto rickshaw but the vehicle involved in the accident is transport auto rickshaw.

6. A ruling of the Hon'ble High Court of Karnataka reported in between ***Mohd. Salar Vs. Syed Ibrahim and others***[1] can be taken into consideration, while appreciating the contention of the appellant's counsel. The facts of the above case are that the driver had driving license to drive light motor vehicle whereas he was driving heavy goods vehicle at the time of accident. Insurance company disputed its liability on the ground that the driver did not possess a valid license. Neither any allegation was not made nor was any evidence produced that there was wilful breach by the insured in permitting his driver to drive HGV though he was holding license to drive LMV. Insurance company has not proved that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling conditions of the policy regarding use of vehicle by duly licensed driver. The evidence of driver discloses that he had been driving this vehicle for last 12 years and the deceased, minor boy

[1] 2005 ACJ 1111

suddenly crossed the road, resulting in accident. Material on record does not disclose that non-possessing of license for driving HGV was the main or contributory cause for the accident. The Hon'ble High Court of Karnataka held that, as there was nothing on record to suggest that the driver was disqualified or incapacitated to drive HGV at the relevant point of time and when the driver was subsequently authorised to drive HGV., Insurance company can not be allowed to avoid its liability on technical grounds of breach of conditions of the policy by the driver. It was held that, no accident has occurred due to incapacity of the driver to drive the offending vehicle and there is no nexus between the accident and the factum of not possessing requisite type of license by the driver.

7. A ruling of the Apex Court reported in between ***National Insurance company limited Vs. Swaran Singh and others***[2] can also be relied upon, wherein, it was held that when the driver was possessing license for one type of vehicle and is found to be driving another type of vehicle, the liability of the insurance company would depend upon the fact that the driver not possessing requisition type of license was the main or contributory cause of accident or not. It was also held that the Insurance company will not be allowed to avoid its liability merely on technical breach of conditions concerning the driving license.

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[2] 2004 ACJ 1

8. A support for the forth coming conclusion can be drawn by the ruling of the Apex Court reported in between ***United India Insurance Company limited Vs. Lehru and others***[3]. The driver in the above case was holding a fake license, the Apex Court held that the insurance company would not be exempted from liability, even in such case. It was held that in order to avoid liability, insurance company has to prove that the driver was not duly licensed and that the owner, insured was aware or had noticed that the license was fake and still permitted that person to drive. It was further held that, even in such case, the insurance company would remain liable to the third party, but it may recover the amount from the insured.

9. This case is on a better footing. The vehicle involved is a transport auto rickshaw, the size and weight are probably the same as that of a non transport auto rickshaw, if not less. The driving mechanism may not differ too.

10. Hence, in view of the above, this Court does not find any reason to interfere with the judgment of the trial court. Hence, the appeal is dismissed. Miscellaneous petitions pending consideration, if any, in this appeal shall stand closed in consequence.

T.RAJANI, J

23.04.2018
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[3] 2003 ACJ 611