IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

[Special Original Jurisdiction]

FRIDAY THE NINETH DAY OF MARCH
TWO THOUSAND AND EIGHTEEN

PRESENT

HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA.No. 6 OF 2012

Between:

The New India Assurance Co.Ltd.,
Represented by its Branch Manager,
Subedarpet branch,
Nellore district. … appellant

V/s.

Rayapu Masthanaiah & ANR. … Respondents

Counsel for the appellant : Sri Katta Laxmi Prasad

Counsel for the Respondents : P.Ganga Rami Reddy
Sri S. Subodh

The court made the following: [Judgment follows]

HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA.No. 6 OF 2012

JUDGMENT :

This Civil Miscellaneous Appeal is arising out of the order and decree dated 10/08/2011 in OP.No. 228 of 2009 on the file of the Court of IV-Additional Motor Accident Claims Tribunal, Nellore.

2. The appellant is the New India Assurance Company Limited, who is the respondent No.2 in O.P.No. 228 of 2009. The respondent No.1 is the claim-petitioner and respondent No.2 is the owner-cum-driver of the crime vehicle, who has filed a claim petition under section 166 of the Motor Vehicles Act, claiming compensation of Rs.1,50,000=00 towards compensation for the injuries sustained by him in a motor vehicle accident against the respondent No.1 owner-cum-driver of the crime vehicle and respondent No.2 the insurer.

4. The Tribunal on consideration of the evidence of the witness – PW-1 and documents Exs.A-1 to A-3 marked on behalf of the applicants and RWs 1 and 2 and the documents Ex.B-1 and B-2 marked on behalf of the respondents has allowed the claim-petition in-part, awarding compensation of Rs.1,00,000/- with interest @ 7.5% per annum against the respondents 1 and 2.

Aggrieved by the impugned award and decree, the appellant/insurer preferred this appeal.

5. The brief facts of the case are that on 29/08/2007, while the applicant was travelling in an Auto bearing No. AP-26-U-6168 as fare-paid passenger at about 16:00 hours, when the Auto was proceeding from Kota to Siddavaram village and by the time when the Auto reached near Kokkupadu village, while negotiating a turn, the driver of the Auto had driven it without blowing horn and dashed the Auto of the applicant. The applicant and others received grievous injuries in the said accident. The applicant was admitted in the Government Hospital and thereafter he was shifted to Dr. Narayana Reddy, Ortho Hospital, Nellore and he was treated as in-patient for a period of four months. Hence, the claim.

6. Respondent No.1 has filed his counter denying the allegations made in the claim-petition with regard to his liability and attributed that the accident occurred due to the rash and negligent driving of the opposite vehicle. The vehicle is covered with insurance, and therefore, the insurer is not liable to pay the compensation.

7. The second respondent filed its counter denying its liability and also quantum of compensation claimed by the petitioner, as highly excessive and also disputed the validity of

driving licence of the driver of the crime vehicle and sought for the dismissal of the claim-petition.

8. The Tribunal on consideration of oral and documentary evidence placed on record has allowed the claim-petition in-part.

9. The points for consideration in this appeal are as follows:

i) Whether there is any violation of the terms and conditions of Insurance Policy ? and

ii) Whether the driver of the crime vehicle was having valid driving license by the date of accident ?

10. Heard the arguments of Sri Katta Laxmi Prasad, learned Standing Counsel for the appellant-New India Assurance Company Limited and the learned counsel for the respondents Sri P. Ganga Rami Reddy and Sri C.Subodh.

11. The learned counsel for the appellant mainly contended that the driver of the crime vehicle was not possessing valid driving licence by the date of accident. The Tribunal without considering this aspect fixed the liability against the insurer which is in violation of the terms and conditions of the Insurance Policy.

12. Learned counsel for the respondent No.1 submitted that the driver of crime vehicle was holding valid driving license by the date of accident, as such insurer's liability cannot be exonerated.

13. Learned counsel for the appellant-insurer mainly contended that on the date of accident, one Challa Ramakrishna, son of Narasimhulu, resident of Kothapalem village, Kota Mandal,

Nellore District was driving the crime auto, and he was possessing the driving licence No.DLFAP02645332006 that was valid from 10.03.2006 to 09.03.2026, and as the said driving licence permits the driver to drive a non-transport vehicle, he cannot drive a transport vehicle. In this connection, the learned counsel for the appellant submitted that there is violation of terms and conditions of insurance policy.

14. In view of the foregoing decisions, this Court is of the considered view that the liability of the insurer cannot be exonerated on the ground that the driver of the crime vehicle was possessing a non-transport vehicle licence but drove a transport vehicle.

15. At the out-set it is to be seen whether there is valid driving license for the driver to drive the crime vehicle by the date of accident. At this juncture, RW-1 K. Lavanya, a Junior Assistant in R.T.O. Office, Nellore, has produced the extract of the driving license of Ch.Rama Krishna, who is the first respondent, owner-cum-driver. Ex.B-1 is the driving license extract of Ch.Ramakrishna, driver. As per Ex.B-1, the first respondent is entitled to drive non-transport vehicles [Auto rickshaw]. She further states that the driver is entitled to drive auto rickshaw non-transport vehicle. She has filed Ex.B-2 Form No.24-B Register of Motor Vehicle Extracts. She further states that the auto rickshaw is a transport vehicle, and the first respondent is not entitled to drive the offending vehicle. The

Insurer got examined RW-2, and he stated that the auto bearing No. AP-26-W-9203 was insured with the second respondent Insurance Company on the date of accident and Ex.B-3 is the copy of Insurance Policy, and the driver of the crime vehicle was possessing valid driving license from 10/03/2006 to 09/03/2026 to drive Auto rickshaw [Non-Transport]. The Tribunal having considering this aspect has come to the conclusion that the respondents 1 and 2 are jointly and severally liable basing on the judgment in **KUSUM LATA AND ORS. V/s. SATBIR AND ORS**[1].

16. O.P.No. 228 pertains to the year 2009, 50% of the awarded amount has already been deposited by the insurer and it is submitted that the deposited amount has already been withdrawn by the claimant, and as the Motor Vehicles Act is a beneficial legislation, the liabiliity of insurer cannot be exonerated.

17. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. The appellant-Insurance Company is directed to deposit the compensation amount within one month from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the amount.

18. As a sequel, miscellaneous petitions if any, pending in this M.A.C.M.A., shall stand closed.

JUSTICE GUDISEVA SHYAM PRASAD.

09/03/2018
I s L

[1]) **AIR 2011 SUPREME COURT-1234**

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

JUDGMENT
IN
MACMA.No. 6 OF 2012
[RESULT :: APPEAL IS DISMISSED]

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