THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A.No.997 of 2006

JUDGMENT:

This appeal is filed by the appellant-claimant under Section 173 of Motor Vehicles Act challenging the judgment and award dated 23.08.2005 passed in M.V.O.P.No.81 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Ongole.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the tribunal in the O.P.

3. The facts leading to filing of the present appeal, in brief, are as follows:

On 10.02.2004 at about 4.00 a.m. the petitioner boarded the auto bearing No.AP 27 U 9861 at his house to go to Railway Station, Ongole. When the auto reached near Masthan Darga Center, Ongole, the driver of the auto had driven the same in a rash and negligent manner and dashed against the wall. The accident occurred only due to the rash and negligent driving of the driver of the auto, against whom the Station House Officer, Ongole I Town registered a case in Crime No.26 of 2004 under Section 337 IPC. Due to accident, the petitioner sustained fracture to left leg knee cap. The petitioner while taking treatment as inpatient in Government Head Quarters Hospital, Ongole, underwent operation. The petitioner spent huge amount towards medicines and treatment. By the time of accident, the petitioner was aged about 30 years and used to earn Rs.2,000/- per month by attending mason work. Due to injuries, the petitioner could not attend her regular work, thereby lost her income. The auto bearing No.AP 27 U 9861, which belongs to first respondent, was insured with the second respondent company. Therefore, respondents 1 and 2 are jointly and severally liable to pay the compensation of Rs.70,000/- to the petitioner with interest at 12% per annum from the date of petition till the date of realisation.

4. The first respondent remained *ex parte.* The second respondent filed written statement denying all the averments made in the petition *inter alia* contending that there was no rashness or negligence on the part of the driver of the auto to cause accident. The petitioner in collusion with the first respondent filed the present petition for unlawful gain. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred due to the rash and negligent driving of the driver of the Auto rickshaw bearing No.AP 27 U 9861?
2. Whether the petitioner is entitled to any compensation? If so, to what amount and from whom?
3. To what relief?

6. During the course of enquiry, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A.1 to A.6 and Ex.X1 were marked. To dislodge the case of the petitioner, on behalf of the respondents, R.Ws.1 and 2 were examined and Ex.B1 was marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal allowed the petition by awarding

compensation of Rs.13,000/- to the petitioner with interest at 7.5% per annum by fastening the liability on the first respondent. Petition against second respondent was dismissed.

8. Being aggrieved by the judgment and award of the Tribunal, the appellant-claimant preferred the present appeal.

9. Heard Sri K.Ananda Rao, learned counsel for the appellant-claimant and Sri Srinivasa Rao Vutla, learned counsel for the respondents.

10. Learned counsel for the appellant submitted that the Tribunal committed grave error while arriving at a conclusion that the driver of the crime vehicle was not having valid and effective driving licence as on the date of accident. He further submitted that the Tribunal failed to consider that the driver of the crime vehicle was having driving licence to drive the light motor vehicle. He further submitted that the trial Court failed to consider the recitals of Exs.A2, A5, A6 and X1 and granted meagre amount of compensation to the petitioner. He further submitted that the Tribunal granted compensation on assumptions and presumptions without considering the documentary evidence available on record, therefore, it is a fit case to interfere.

11. Learned counsel for the second respondent submitted that admittedly the driver of the crime vehicle was not having a badge to drive the transport vehicle and that aspect was considered by the Tribunal in right perspective. He further submitted that there is no contractual or statutory obligation on the part of the second respondent to indemnify the liability of the first respondent, who

violated the terms and conditions of Ex.B1 policy. He further submitted that the findings recorded by the Tribunal are based on sound reasoning, therefore, it is not a fit case to interfere.

12. Basing on the rival contentions, the points that arise for consideration in this appeal are:

1. Whether the accident occurred due to the rash and negligent driving of the driver of the auto bearing No. AP 27 U 9861?

2. Whether the Tribunal has awarded just and reasonable compensation or not?

3. Whether the first respondent had violated the terms and conditions of Ex.P1 policy so as to absolve the liability of second respondent?

13. **<u>POINT No.1</u>**: Though the Tribunal framed this issue, did not answer the same. Both counsel in all fairness submitted that this Court is competent to decide this issue basing on the material available on record. As seen from the testimony of P.W.1, on the date of accident, she boarded the auto bearing No.AP 27 U 9861 to go to Railway Station, Ongole. When the auto reached near Masthan Darga, the driver of the auto had driven the same in a rash and negligent manner and dashed against the wall. Ex.A1 is the certified copy of FIR in Crime No.26 of 2004. Ex.A3 is the certified copy of charge sheet. In the cross-examination of P.W.1, nothing was elicited to shake her testimony so far as the manner of accident is concerned. It is not in dispute that at the time of accident, the petitioner was travelling in the crime vehicle; therefore, she is the competent person to speak about the manner of accident. As per the recitals of Ex.A1 FIR and Ex.A3 charge sheet, the accident occurred due to the rash and negligent driving of the driver of the auto. Apart from P.W.1, the driver of the auto

is also the competent person to speak about the manner of the accident. For the reasons best known, the first respondent remained *ex parte.* Admittedly, R.Ws.1 and 2 are not eye witnesses to the accident. Therefore, their testimony is no way helpful to second respondent. The second respondent also did not take any steps to examine the driver of the crime vehicle or any other person to negate the contention of the petitioner. The oral testimony of P.W.1 is fully supported by the recitals of Exs.A1 and A3. There are no grounds much less valid grounds to disbelieve the testimony of P.W.1, who is an injured witness. Taking into consideration the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 27 U 9861, which resulted injuries to the petitioner. Hence, point No.1 is answered in favour of the petitioner.

14. **POINT No.2**: The Tribunal awarded an amount of Rs.12,500/- towards grievous injury and Rs.500/- towards mental agony. As seen from the testimony of P.W.1, she sustained fracture to left leg and took treatment as inpatient for two months ten days in Government Head Quarters Hospital, Ongole. Ex.A5 is the OP chit. Ex.A6 is the discharge summary issued by NIMRA hospital. As per the testimony of P.W.2, the petitioner was admitted in Government Head Quarters Hospital on 10.02.2004 and discharged on 14.04.2004. As per the testimony of P.W.2, the petitioner incurred 30% disability. The oral testimony of P.Ws.1 and 2 coupled with Ex.X1 reveals that the petitioner was admitted in Government Head Quarters Hospital, Ongole on 10.02.2004 and discharged on 14.04.2004. A perusal of Ex.X1 reveals that the

petitioner sustained multiple fractures to left knee cap. Admittedly, the petitioner took treatment for a period of two months four days in Government Head Quarters Hospital, Ongole and underwent operation due to multiple fractures to knee cap. Due to fracture, the petitioner might have suffered a lot. Taking into consideration the nature of fracture sustained by the petitioner, this Court is inclined to grant an amount of Rs.20,000/- towards pain and suffering. It is a known fact that a person, who took treatment in Government General Hospital, has to purchase medicines. Taking into consideration the nature of fracture sustained by the petitioner, this Court is inclined to grant an amount of Rs.5,000/- towards medicines. Due to fracture, the petitioner might not have attended to her regular work for a period of two months from the date of discharge. The petitioner might not have attended to her work for a period of three months. Except the self-served testimony of P.W.1, there is no other convincing evidence to establish that by the time of accident, the petitioner was earning Rs.3,000/- per month by attending mason work. Even by attending to a mason work, one may get at least Rs.2,000/- per month. Hence, this Court is inclined to grant an amount of Rs.10,000/- towards loss of earnings. The Tribunal is also inclined to grant an amount of Rs.2,000/- towards extra nourishment and transportation charges, which is just and reasonable. It is a known fact that once the knee cap was removed, it may not be possible for any person to enjoy the life as he used to enjoy prior to the accident. Taking into consideration the facts and circumstances of the case, this Court inclined to award an amount of Rs.13,000/- towards loss of future amenities.

If the Tribunal has taken into consideration the recitals of Ex.X1 case sheet, Exs.A5 and A6 O.P.chits, the compensation awarded by it may be otherwise. The Tribunal lost sight of the recitals of the above documents and granted a meagre amount of compensation under various heads. The amount of compensation awarded under various heads is just and reasonable to meet the ends of justice. The petitioner is also entitled for interest at 7.5% per annum on the enhanced amount from the date of petition till the date of realisation. Accordingly, this point is answered.

15. **POINT No.3**: The contention of the second respondent is that the driver of the auto was not having valid and effective driving licence as on the date of accident. As seen from the testimony of R.Ws.1 and 2, the driver of the crime vehicle was having a licence to drive non-transport light motor vehicle. Ex.A4 is driving licence of the petitioner. Even as per the testimony of R.Ws.1 and 2, the auto is a light motor vehicle. The skill required for driving the light motor vehicle transport or non-transport is one and the same. A perusal of Ex.B1 reveals that the auto bearing No.AP 27 U 9861, which belongs to the first respondent, was insured with the second respondent company with effect from 30.06.2003 to 29.06.2004. Hence, Ex.B1 policy was in force as on the date of accident. It is not in dispute that the driver of the crime vehicle was not having badge at the time of accident. The crucial question that falls for consideration is whether non-holding of a badge by itself is a valid ground to absolve the liability of second respondent.

16. In order to resolve the issue, this Court is placing reliance on the following decisions:

In ***S.Iyyapan Vs. United India Insurance Co.***[1] the Hon'ble apex Court held as follows:

> 17. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. .Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely,
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> (*i*) the vehicle was not driven by a named person,
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> (*ii*) it was being driven by a person who was not having a duly granted licence, and
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> (*iii*) person driving the vehicle was disqualified to hold and obtain a driving licence.
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> Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.
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> 18. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment[5] is, therefore, liable to be set aside.
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> 19. We, therefore, allow this appeal, set aside the impugned judgment of the High Court and hold that the insurer is liable to pay the compensation so awarded to the dependants of the victim of the fatal accident. However, there shall be no order as to costs.

In ***Kulwant Singh and others Vs. Oriental Insurance Co. Ltd***[2] the Hon'ble apex Court held as follows:

> 10. In S. Iyyapan (supra), the question was whether the driver who had a licence to drive 'light motor vehicle' could drive 'light motor vehicle' used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle. It was held that in such a case, the Insurance Company could not disown its liability. It was observed:
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> > "19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle.

[1] (2013) 7 SCC 62
[2] 2014 ACJ 2873

> There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside."
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> No contrary view has been brought to our notice.
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> 11. Accordingly, we are of the view that there was no breach of any condition of insurance policy, in the present case, entitling the Insurance Company to recovery rights.

17. As per the principle enunciated in the cases cited supra, mere non-obtaining of endorsement on the driving licence by itself would not amount to violation of terms and conditions of the policy so as to absolve the liability of insurance company. It is not the case of the second respondent that the proximate cause of the accident is non-holding of the badge by the driver of the crime vehicle. The facts of the case on hand are almost identical to the facts of the cases cited supra.

18. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am unable to accede to the contention of the learned counsel for the second respondent that the first respondent has violated the terms and conditions of Ex.B1 policy so as to absolve the liability of second respondent. The first respondent being the owner of the auto bearing No.AP 27 U 9861 is vicariously liable for the wrongful acts done by his driver in the course of employment. The second respondent has to indemnify the liability of first respondent. Therefore, respondents 1 and 2 are jointly and severally liable to pay the compensation to the petitioner with interest at 7.5% per annum from the date of petition till the date of realisation.

19. In the result, the appeal is allowed in part by enhancing the amount of compensation from Rs.13,000/- to Rs.50,000/-. Respondents 1 and 2 are directed to pay the compensation amount to the petitioner with interest at 7.5% per annum from the date of petition till the date of realisation. The respondents 1 and 2 are further directed to deposit the awarded amount of compensation within two months from today. On such deposit, the petitioner is entitled to withdraw the same. There shall be no order as to costs.

20. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

3rd April 2018
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