THE HON'BLE MS.JUSTICE J.UMA DEVI

M.A.C.M.A.NO.1430 OF 2010

JUDGMENT:

This appeal is filed by the claimant in O.P.No.574 of 2007 on the file of the Chairman, Motor Accident Claims Tribunal-cum-I Addl. District Judge, Adilabad, ventilating his grievance that the Tribunal has erred in exonerating the 2nd respondent-ICICI Lombard General Insurance Company Ltd., from its liability to pay compensation jointly and severally along with the 1st respondent, who is the owner of Bolero vehicle bearing No. MP.05-G-6193, which is responsible for the occurrence of the accident, dated 14.08.2007, that resulted instantaneous death of his mother, Smt.Posani. dissent

2. The appellant-claimant is the only son of the deceased Smt.Posani, who died in the road accident dated 14.08.2007. He laid the claim against the owner and insurer of Bolero vehicle bearing No. MP.05-G-6193 contending that on 14.08.2007 at about 5.15 P.M., while his mother was returning from flour mill after completion of grinding work, she was hit by Bolero vehicle bearing No. MP.05-G-6193 which came from her behind in a rash and negligent manner. As the driver of the aforementioned vehicle was responsible for the occurrence of the said accident, he laid the claim against the owner and insurer of the said vehicle,

who were the respondents Nos. 1 and 2 herein. A complaint was given to the police of Gudihathnooor against the driver of Bolero vehicle bearing No. MP.05-G-6193 and a case in Cr.No.64 of 2007 was registered against him under Section 304-A IPC. The deceased was 60 years old by the date of the accident and was earning Rs.3,000/- per month through cultivation and by attending to coolie work.

3. The 1st respondent remained *ex parte*. The 2nd respondent-Insurance Company alone contested the case contending that the deceased herself was negligent and while she was crossing the road without observing the movements of the vehicles, the accident took place. It is also contended by the 2nd respondent that the driver of the vehicle was not possessing valid and effective subsisting driving licence by the date of the accident and that the vehicle was used in violation of the terms and conditions of the policy, and also in deviation of permit granted to it.

4. Additional counter was also filed by the Insurance Company stating that the 1st respondent registered the vehicle bearing No. MP.05-G-6193 with the Madhya Pradesh Transport Department and that he had no permit to ply the said vehicle in the State of Andhra Pradesh. Thus, a specific stand was taken by the 2nd respondent stating that the 1st respondent had no valid permit to ply the vehicle in Andhra

Pradesh State and that the terms and conditions of the policy were breached by him.

5. The appellant to prove his case, got examined himself as P.W.1, and an eye witness to the accident was examined as P.W.2 and Exs.A1 to A9 were marked. No oral or documentary evidence was adduced by the 2nd respondent.

6. Relying on the evidence of P.W.2 and Exs.A1 to A3, the Court below came to the conclusion that the accident, dated 14.08.2007, which resulted the death of the deceased was caused by the driver of Bolero vehicle bearing No. MP.05-G-6193. The learned Judge came to the conclusion that the accident, which resulted the death of the deceased was caused by the driver of the Bolero vehicle bearing No. MP.05-G-6193 due to the negligent driving of the said vehicle by him, and also due to the negligence of the deceased herself who failed to take necessary precautions while proceeding on the road, apportioned the negligence on the part of the driver of the Bolero vehicle bearing No. MP.05-G-6193 and the deceased in the ratio of 90:10 percent.

7. The grievance of the appellant was not regarding the apportionment of negligence on the part of the driver of

Bolero vehicle bearing No. MP.05-G-6193 and the deceased in the ratio of 90:10 percent and he also had no grievance as to the quantification of compensation. His grievance was only on the aspect of exonerating the Insurance Company from its liability to pay compensation.

8. His contention was that the Tribunal erred in holding that the terms and conditions of the policy issued in respect of crime vehicle were breached by the 1st respondent. It was contended by the appellant that the Tribunal without proper appreciation of Ex.A8, which was the receipt issued by the Motor Vehicle Inspector at Adilabad as to the payment of permit fee relating to the crime vehicle, had held that there was no valid permit for the vehicle belonging to the 1st respondent to ply in A.P. State.

9. The Insurance Company in the present case had not adduced any evidence. No document was produced by the Insurance Company to substantiate its plea that the crime vehicle had no permit to ply in the State of Andhra Pradesh. The appellant himself produced the copy of the insurance policy of the crime vehicle. He also produced attested copy of registration certificate of the crime vehicle, and the attested copy of temporary permit granted to it by the Transport Authorities of Adilabad. The appellant also

produced Ex.A8 to show that requisite permit fee was paid by the 1st respondent in respect of the crime vehicle.

10. It appears that the 2nd respondent filed the additional counter after examination of P.W.1 based on the documents he produced. The 2nd respondent though owes the duty of discharging the burden of establishing the specific plea taken by it as to non possessing of valid permit for the crime vehicle at the relevant point of time, it does not choose to adduce any evidence. The 2nd respondent also has not taken any steps to summon the concerning transport authorities to prove about the vehicle particulars. The claimant though is not supposed to produce the document relating to the crime vehicle, he has produced all the documents concerning to the crime vehicle viz., copy of the registration certificate, temporary permit, insurance policy and the receipt to show the payment of permit fee by the 1st respondent, and that vehicle in question though is registered in the State of Madhya Pradesh, it has been issued with temporary permit and that the requisite permit fee is paid by the 1st respondent etc., Since Ex.A8 document which is permit fee receipt, does not show the time of payment, the learned Judge has taken the view that vehicle in question has no valid and subsisting permit to ply in the State of Andhra Pradesh as on the date of the accident and thus, the

policy conditions of the crime vehicle are breached by the vehicle owner. I dissent from this view of the learned Judge for reasons which are analyzed in the next succeeding para.

11. There is no dispute that the crime vehicle has got the registration certificate and that it has been registered in the State of Madhya Pradesh. But the vehicle owner has obtained temporary permit to ply the vehicle in the State of Andhra Pradesh. As per Ex.A8, payment receipt, necessary permit fee is also paid on 14.08.2007 i.e., on the date when the accident took place. Since Ex.A8 does not show the time of payment, the learned Judge has taken the view that the vehicle has no valid permit. The said view taken by the trial Court is not correct. In my opinion extending the benefit of exonerating the liability of payment of compensation to the insurer which has not made any endeavour to prove its plea, is not proper. The learned Judge seems to have dealt with the case technically, and exonerated the Insurance Company from its liability to pay compensation because of non mentioning of time of payment in Ex.A8. The learned Judge ought to have directed the Insurance Company to satisfy the award first by making payment of compensation to the claimant and then to initiate proceedings of recovery after establishing the stand taken by it. Instead of giving such a direction, the learned Judge has exonerated the Insurance

Company completely from its liability to pay compensation. There cannot be any hesitation for this Court to agree with the contention raised by the appellant in this regard as it is apparent from the material on record that the Insurance Company has not taken steps to prove its specific stand of defence that the crime vehicle has no valid and subsisting permit as on the date of the accident. Though it is obligatory on the part of the Insurance Company to prove its contention that the policy conditions are breached by the vehicle owner in not obtaining valid permit of the vehicle, it has not taken any steps to adduce relevant evidence in this regard. Therefore, I feel that it is appropriate to give a direction to the Insurance Company to satisfy the award passed by the Court below by making payment of compensation first and then to initiate proceedings of recovery that too after establishing its plea of defence.

12. In the result, the appeal filed by the claimant in O.P.No.574 of 2007 is disposed of holding that the trial Court erred in absolving the Insurance Company from its liability to pay compensation instead of giving a direction to it to satisfy the award first and then initiate proceedings of recovery. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

J.UMA DEVI, J

DATED: 14-08-2018.
Hsd