HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

M.A.C.M.A.No.3612 of 2012

JUDGEMENT:

This appeal is directed against the order dated 06.09.2011 in MATOP No.745 of 2008 on the file of the Chairman, MACT cum V Additional District Judge (FTC), Khammam at Kothagudem, wherein, the claim of the claimant for the injuries sustained by him in a motor vehicle accident, was allowed in part, awarding a sum of Rs.84,000/- with interest at 7.5% per annum from the date of petition, till the date of realization.

2. The appellant-insurer herein is the 3rd respondent, the 1st respondent herein is the petitioner, the 2nd respondent herein is the erstwhile owner of the Tipper-1st respondent and the 3rd respondent herein is the present owner of the Tipper-2nd respondent, in the original petition. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The petitioner filed claim application seeking compensation of Rs.1,00,000/- on account of the injuries sustained by him in a road accident that occurred on 14.03.2008. The case of the petitioner, in brief, is that, on the date of accident, at about 12.10 p.m., he got down from the auto at S.T. Colony and was crossing the road, in the meanwhile, the Tipper lorry bearing No.AP 09 V 3761, coming from Kothagudem side, driven by its driver in a rash and negligent manner and dashed the petitioner, causing injuries to him; a case in Cr.No.36 of 2008 was registered against the driver of the Tipper lorry by Julurpadu PS; the petitioner was working as coolie and earning Rs.125/- per day

and due to the accident, he is unable to do the coolie work and walk freely. The respondents 1 and 2 being the previous and present owners of the lorry and the 3rd respondent, being the insurer, are jointly and severally liable to pay compensation.

4. The 1st respondent remained *ex-parte*. The 2nd respondent filed counter denying the allegations and contended that there is no negligence on the part of the driver of the crime vehicle and that the driver was having valid driving licence as on the date of accident and if any compensation is payable, it is for the 3rd respondent-insurer to pay the same. The 3rd respondent-insurer field counter, denying the allegations of the petition and contended that the driver of the Tipper lorry was not having valid driving licence at the time of the accident; that the accident occurred due to the self-negligence of the claim petitioner and the petition is liable to be dismissed.

5. On the basis of the above pleadings, the Tribunal framed three issues. On behalf of the petitioner, PWs.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the 3rd respondent, RWs.1 and 2 were examined and Exs.B.1 and B.2 were marked.

6. Heard Sri A. Ramakrishna Reddy, learned counsel for the appellant, Sri K. Prabhakar Rao, learned counsel for the 1st respondent (claimant) and Sri Pullarao Yellanki, learned counsel for the 3rd respondent. None appears for the 2nd respondent, though served with notice. Perused the records.

7. Learned counsel for the appellant, though contended that there was negligence on the part of the petitioner in causing the accident, no evidence has been adduced to prove the same. However,

basing on the evidence of PW.1-victim, coupled with the contents of Ex.A.1-FIR and Ex.A.2 charge sheet, it shows that the accident occurred due to the rash and negligent driving of the Tipper lorry bearing No.AP 09 V 3761 and the finding of the Tribunal to that effect needs no interference.

8. Coming to the claim, the petitioner claimed a sum of Rs.1,00,000/- as compensation under various heads for the injuries sustained by him. As per the evidence of PW.1, he sustained injury on frontal head, fracture of left side collar bone and back side ribs and fracture of left side thigh bone. His evidence further shows that immediately after the accident, he was admitted in Government Hospital, Kothagudem and thereafter he was shifted to District Head Quarters Hospital, Khammam, where, he incurred a sum of Rs.20,000/- for treatment. In support of his evidence, he filed Ex.A.3-medical certificate and Ex.A.5-bunch of medical bills. He also examined the Assistant Surgeon, Orthopedics, Government Head Quarters Hospital, Khammam as PW.2. According to PW.2, the petitioner was admitted in the hospital on 14.03.2008 and discharged on 24.04.2008 and the patient was advised bed rest for three months. His evidence further shows that the petitioner purchased nail or rod and few medicines, which are not available in the hospital, which may cost Rs.10,000/- to Rs.12,000/-. He admitted that the medical bills worth Rs.13,204/- under Ex.X.1 are prescribed by him during the course of treatment; Ex.X.1 and Ex.X.2 are the case sheets pertaining to PW.1; and the petitioner needs another surgery which may require Rs.10,000/- to Rs.12,000/-.

9. Basing on the evidence of PWs.1 and 2, the Tribunal awarded a sum of Rs.84,000/- towards compensation to the petitioner under

various heads for the injuries sustained by him in the accident and the same is not seriously disputed by the appellant. The petitioner has not filed any appeal seeking enhancement of the claim. As the petitioner sustained two fractures and one simple injury and has taken treatment for about two months and was advised bed rest for three months, considering the age, income and avocation of the petitioner, the amount awarded by the Tribunal is just and reasonable and needs no interference by this Court.

10. The main contention of the appellant-insurer is that, the driver of the Tipper, has no valid driving licence to drive the Tipper; that the driver of the offending vehicle was having LMV licence-Tractor and Trailer licence, whereas, the crime vehicle was HGV and the 1st respondent violated the conditions of the terms and conditions of the policy and hence, the appellant insurance company is not liable to pay any compensation. He further contended that though the owner of the Tipper having knowledge that the driver of the offending vehicle has no valid driving licence to drive the same, he allowed him to drive same and hence, there is clear violation of the terms and conditions of the policy and Section 149 of the Motor Vehicle Act applies.

11. As per the evidence of RW.2, the driver of the offending vehicle was having tractor and trailer non transport driving licence on the date of accident. Basing on the evidence of RW.2 and relying on the decisions of the Hon'ble Supreme Court in '*National Insurance Company vs. Swaran Singh*[1]', the Tribunal directed the Insurance Company to pay the compensation and then recover the same from the 1st respondent-

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1 (2004) 3 SCC 297

owner of the Tipper for breach of conditions of the policy. In *Swaran Singh*'s case, the Honble Supreme Court, held as follows:

> "The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."

To avoid the liability, the Insurance Company has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the conditions of the policy. As per the evidence of RW.2, the driver of the crime vehicle was having licence to drive the tractor-trailer, which is light motor vehicle. It is settled principle that a person holding licence would also come within the purview of 'duly licensed', as such a licence is also granted in terms of the provisions of the Act and Rules framed there under and that the rules validly framed become part of the statute. Such rules are, therefore, required to be read as part of the main enactment. There cannot be any doubt or dispute that defences enumerated in Section 149(2) would be available to the insurance companies, but that does not and cannot mean that despite such defences having not been established, they would not be liable to fulfill their statutory obligation under sub-section (1) of Section 149 of the Act. As stated above, to avoid its liability, the insurer has to prove that there was clear negligence on the part of the insured in handing over the vehicle to a person, who is not having valid licence, but the insurer failed to establish that there was any negligence or the owner failed to take reasonable care in allowing the driver to drive the same by adducing any cogent evidence. Therefore, considering the oral and documentary evidence on record and in the facts and circumstances of the case, I am of the view that the Tribunal has rightly directed the appellant-insurer to pay the compensation to the claimant, relying on the decision of the Hon'ble Supreme Court in *Swaran Singh*'s case (supra) and to recover same from the owner of the vehicle.

12. In view of the same, the appeal fails and is accordingly, dismissed. No order as to costs. Miscellaneous petitions pending, if any, in this appeal, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 29.11.2018
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