HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CRP No. 3399 of 2009

O R D E R :

This civil revision petition is filed against the order dated 02.08.2007 in MV.OP.No.228 of 2006 on the file of the Chairman Motor Accidents Claims Tribunal, District Judge, Khammam.

The brief facts of the case are that on 01.11.2005, the petitioner and others boarded an auto bearing No.AP 20W 4316 at Old Rompedu to reach Yellandu. The driver of auto bearing No.AP 20W 2809, which is coming in opposite direction from Yellandu, drove the auto in a rash and negligent manner with high speed and dashed the auto, as a result of which the petitioner and other inmates of auto received grievous and simple injuries. The accident occurred only due to the negligent act of the driver of the crime vehicle. The petitioner was shifted to Government Hospital, Yellandu and after first aid as the condition of the petitioner was serious; she was shifted to Government Hospital, Khammam and where she took treatment as in-patient. It is submitted that the petitioner was a coolie by profession and was earning Rs.100/- per day. Due to the injuries, the petitioner is unable to attend her normal duties and lost the income from her profession. Therefore, she filed the petition under Section 166 of the Motor Vehicles Act claiming compensation of

Rs.30,000/- jointly and severally by the respondents 1 and 2 being owner and insurer of the auto respectively.

The first respondent remained *ex parte*. The second respondent denied all the averments made in the claim petition including the manner of accident as narrated in the petition. The income, health condition, occupation and the injuries sustained by the petitioner and also the amount spent by her towards treatment etc., are also denied.

Basing on the pleadings, the following issues were settled for trial:

1. whether the accident took place due to rash and negligent driving of the accident vehicle, Auto bearing No.AP-20-W-2809 by its driver?
2. whether the petitioner is entitled to claim any compensation, if so, to what amount and from which of the respondents?
3. to what relief?

On behalf of the petitioner, she was examined as PW.1 and got marked Exs.A.1 to A.5. On behalf of the respondents, RW.1 was examined and Ex.B.1 copy of the insurance policy was marked.

Based on the pleadings and evidence, the lower Court awarded compensation of Rs.6,000/- along with interest @ 7.5% from date of claim petition till realization. This order is now impugned in this revision.

This Court has heard Sri N.Mohan Krishna, learned counsel for the petitioner. None appeared for the respondents.

The essential ground that is urged by the learned counsel for the appellant is that the driver of the offending/accident causing vehicle had no valid driving licence and so the insurance company is not liable.

A perusal of the record shows that the appellant did not introduce evidence to prove this fact. They could have applied to the local Road Transport Office to obtain a certificate to this effect or could have summoned the officials along with the records to establish this fact. They have merely denied the existence of a driving licence along with all other facts and did not adduce any evidence let alone of the quality required in the case of **National Insurance Company v. Swaran Sing**[1].

In the said case, Hon'ble Supreme Court was dealing with wide spectrum of defence pleas of Insurance Companies basing on the deficiencies in driving licences.

The Hon'ble Supreme Court after discussing various issues involved in this regard, summarized its findings thus:

> *i) 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*

[1] AIR 2004 SC 1531

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.

ii) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

iii) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid license by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under section 149(2) of the Act.

iv) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case.

v) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal.

From the above summarization, it is clear that an Insurance Company in order to succeed in its defence touching the driving licence issues must:

a) Firstly establish 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 vehicle by a duly licensed driver or one who was not disqualified to driving at the relevant time.

b) Secondly, the breach, which was committed by the insured, was so fundamental as is found to have contributed to the cause of the accident.

Therefore, in view of the above, it is not sufficient for the Insurance Company to prove that the driver of the offending vehicle had no valid driving licence to absolve its liability. It has to further establish that the owner of the vehicle had intentionally allowed the un-licensed driver to drive the vehicle, thus caused the breach of terms of the policy and further the said violation was the fundamental cause for the accident. In this case, the Insurance Company could only establish that the driver of the offending auto had no valid licence. It failed to prove all the other aspects that are required.

This Court, in view of the decision of the Hon'ble Supreme Court in **Swaran Sing**'s case (1 supra) and in view of the lack of any positive evidence, has no hesitation in upholding the award of the lower Court in all respects.

In the result, the order dated 02.08.2007 is confirmed and the revision is dismissed. In the circumstances of the case, no costs.

As a sequel, miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 15.02.2018
KLP