HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.763 of 2012

<u>JUDGMENT</u>:

This appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act") is preferred by the appellant - United India Insurance Company Limited, challenging the order and decree dated 09.01.2012 in M.V.O.P.No.510 of 2009 passed by the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Karimnagar District (for brevity "the Tribunal").

2. The appellant – United India Insurance Company Limited herein is respondent No.3, respondent No.1 herein is the petitioner, respondent Nos.2 and 3 herein, who are driver and owner, respectively, of the crime Tractor/Trailor bearing No.AP15-AH-2880-2881, are respondent Nos.1 and 2 in M.V.O.P.No.510 of 2009. For the sake of convenience, the parties are referred to as they were arrayed in the claim petition before the Tribunal.

3. The brief facts of the case are that, on 28.11.2008 while the petitioner, who was aged about 12 years and minor as on the date of accident, was returning from school to her house on a cycle, when she reached near Subashnagar Church at about 5.00 p.m., a Tractor/Trailor bearing No.AP15-AH-2880-

2881 came in opposite direction driven by the 1st respondent – driver in a rash and negligent manner and dashed against the petitioner, as a result of which, the petitioner fell down and received injuries. Immediately, the petitioner was shifted to Government Civil Hospital, Karimnagar and from there she was shifted to NIMS Hospital, Hyderabad, where she underwent surgery. Subsequently, the petitioner was admitted and given treatment as an inpatient for about 2 months in Renee Hospital, Karimnagar, by incurring a sum of Rs.2,50,000/-. Due to the accident and ran over of tractor tires on her both legs, the petitioner developed permanent disability in the form of limping. On complaint, the SHO, Sultanabad P.S. registered a case in Crime No.163/2008 under Section 337 IPC against respondent No.1 – driver of the crime Tractor/Trailor. The petitioner filed the aforesaid claim petition in M.V.O.P.No.510 of 2009 under Section 166(1) of the Act against the driver, owner and insurer of the crime Tractor/Trailor claiming compensation of Rs.4,00,000/- for the disability sustained by her in the accident.

4. Before the Tribunal, respondent Nos.1 and 2 filed counter denying their liability and contending that respondent No.3-insurer is liable to pay compensation. Respondent No.3-insurer filed counter denying its liability and contending that respondent No.1-driver of the crime vehicle was not having valid driving licence to drive the

vehicle as on the date of accident and that the compensation claimed by the petitioner is highly excessive.

5. On consideration of the evidence of witnesses PWs.1 to 4 and documentary evidence under Exs.A.1 to A.14 adduced on behalf of the petitioner; and also the evidence of RW.1 and documentary evidence under Exs.B.1 to B.4 adduced on behalf of respondent No.3-insurer, by the aforesaid order and decree dated 09.01.2012, the Tribunal had partly allowed the claim petition awarding compensation of Rs.3,87,000/- to the petitioner with interest at 7.5% per annum from the date of the petition till realisation against respondent Nos.2 and 3, who are owner and insurer, respectively, of the crime Tractor/Trailor jointly and severally directing them to deposit the same within one month. Aggrieved by the said order and decree passed by the Tribunal in fixing liability against it, the appellant-insurer has filed the present appeal.

6. Heard the arguments of learned Standing Counsel for the appellant-insurer as well as the learned counsel for respondent No.1-petitioner and perused the material on record, including the impugned order passed by the Tribunal.

7. Learned Standing Counsel for the appellant-insurer mainly contended that the driver of the crime Tractor/Trailor is not having valid and effective driving licence as on the date of accident and, therefore, the appellant-insurer is not liable

to pay compensation to the 1st respondent-petitioner as there is violation of the terms and conditions of the Insurance Policy. It is further submitted that the appellant-insurer had taken all steps by serving notices on the driver and owner of crime Tractor/Trailor for production of driving licence of respondent No.1-driver, which is evident from Exs.B.2 - copy of notice, Ex.B.3 – postal receipt and Ex.B.4 – served acknowledgement card, but they did not give any reply nor furnished any details of driving licence. It is also contended that in the charge sheet, the 1st respondent-driver was charged under Section 3 r/w. Section 181 of the Act for not possessing valid driving licence at the time of accident and, even on that ground, the Tribunal ought to have exonerated the appellant-insurer from the liability.

8. On the other hand, learned counsel for the 1st respondent – petitioner contends that the Tribunal has considered the evidence on record in proper perspective and by placing reliance on a decision of this Court in D. KRISHNAVENI AND OTHERS Vs. MOHD. SIKANDER AND ANOTHER[1], came to the conclusion that the insurer is jointly and severally liable to pay compensation along with the owner of the crime Tractor/Trailor.

9. In the light of the arguments advanced by the learned Standing Counsel for the appellant-insurer, it is obvious that

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the appellant-insurer had taken all steps against the owner and driver of the crime Tractor/Trailor for securing the details of the driving licence of the driver, but failed to secure the required information from them. It is pertinent to note that the police have filed charge sheet against the deriver of the crime Tractor/Trailor charging him under Section 3 r/w. Section 181 of the Act for not possessing driving licence. In this connection, it is apt to refer Section 181 of the Act, which reads as under:

> "**181. Driving vehicles in contravention of Section 3 or Section 4 :-** Whoever drives a motor vehicle in contravention of Section 3 or Section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

10. It is also pertinent to note that the Tribunal had placed reliance on para-8 of the decision of this Court in D. KRISHNAVENI's case (supra), which is extracted below, in holding that the insurer is jointly and severally liable to pay compensation along with the owner of the crime Tractor/Trailor.

> "The insurance company has not only to prove that the driver of the offending vehicle who was driving it at material time had no valid driving license and it has to further establish that the owner of the vehicle either wilfully allowed the driver who was not duly licensed to drive such vehicle or that he failed to exercise reasonable care, otherwise the insurance company cannot disown its liability on the ground of breach of terms and conditions of the policy."

11. From the above, it is clear that though the appellant-insurer was able to establish that the driver of the crime vehicle was not possessing valid driving licence as on the date of accident, it could not establish that the owner of the said vehicle had either wilfully allowed the driver, who was not having licence, to drive the vehicle or failed to exercise reasonable care to disown its liability.

12. In the instant case, though the appellant-insurer had taken all steps against the owner and driver of the crime Tractor/Trailor for securing the particulars of driving licence of respondent No.1-driver, they did not produce any particulars, but there is no material on record to show that the owner had entrusted the crime Tractor/Trailor to the driver knowing fully well that the driver is not having valid driving licence. Therefore, it is a fit case where pay and recovery can be ordered.

13. In view of the fact that the Motor Vehicles Act is a beneficial legislation and the rights of the third parties have to be protected and that the violation of the terms and conditions of the Insurance Policy cannot be a ground to disown the liability of the Insurance Company and also in the interest of justice, the appeal is allowed in part, modifying the award and directing the appellant-insurer to pay the compensation awarded by the Tribunal to the petitioner, at

the first instance, and recover the same from the owner of the crime Tractor/Trailor. No order as to costs.

14. Consequently, miscellaneous petitions, if any pending in this appeal shall stand closed.

GUDISEVA SHYAM PRASAD, J

19.01.2018.
Msr

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